

Banking Act*

(Gesetz über das Kreditwesen)

Revised read-only version

Unofficial text

In the wording of the announcement of 9 September 1998, Federal Law Gazette I, page 2776,

- as last amended by Article 1 of the Act Adjusting Financial Market Legislation (*Gesetz zur Anpassung von Gesetzen auf dem Gebiet des Finanzmarktes*) of 15 July 2014, Federal Law Gazette I, page 934.

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* This working translation is provided by the Deutsche Bundesbank and is for information purposes only. This translation is not official; the only authentic text is the German one as published in the Federal Law Gazette (*Bundesgesetzblatt*).

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Part I

General provisions

Division 1 CREDIT INSTITUTIONS, FINANCIAL SERVICES INSTITUTIONS, FINANCIAL HOLDING COMPANIES, MIXED FINANCIAL HOLDING COMPANIES, MIXED-ACTIVITY HOLDING COMPANIES AND FINANCIAL UNDERTAKINGS

Section 1 Definition of terms

(1) ¹Credit institutions are undertakings which conduct banking business commercially or on a scale which requires commercially organised business operations. ²Banking business comprises

- 1 the acceptance of funds from others as deposits or of other unconditionally repayable funds from the public, unless the claim to repayment is securitised in the form of bearer or order bonds, irrespective of whether or not interest is paid (deposit business),
- 1a the business specified in section 1 (1) sentence 2 of the Pfandbrief Act (*Pfandbriefgesetz*) (Pfandbrief business),
- 2 the granting of money loans and acceptance credits (credit business),
- 3 the purchase of bills of exchange and cheques (discount business),
- 4 the purchase and sale of financial instruments in the credit institution's own name for the account of others (principal broking services),
- 5 the safe custody and administration of securities for the account of others (safe custody business),
- 6 (repealed)
- 7 the entering into of a commitment to repurchase previously sold claims in respect of loans prior to their maturity,
- 8 the assumption of sureties, guarantees and other warranties on behalf of others (guarantee business),
- 9 the execution of cashless cheque collections (cheque collection business), bill collections (bill collection business) and the issuance of travellers' cheques (travellers' cheque business),
- 10 the purchase of financial instruments at the credit institution's own risk for placing in the market or the assumption of equivalent guarantees (underwriting business),

11 (repealed)

12 acting in the capacity of a central counterparty within the meaning of subsection (31).

(1a) ¹Financial services institutions are undertakings which provide financial services to others commercially or on a scale which requires commercially organised business operations, and which are not credit institutions. ²Financial services comprise

1 the brokering of business involving the purchase and sale of financial instruments (investment broking),

1a providing customers or their representatives with personal recommendations in respect of transactions relating to certain financial instruments where the recommendation is based on an evaluation of the investor's personal circumstances or is presented as being suitable for the investor and is not provided exclusively via information distribution channels or for the general public (investment advice),

1b operating a multilateral facility, which brings together a large number of persons' interests in the purchase and sale of financial instruments within the facility according to set rules in a way that results in a purchase agreement for these financial instruments (operation of a multilateral trading facility),

1c the placing of financial instruments without a firm commitment basis (placement business),

2 the purchase and sale of financial instruments on behalf of and for the account of others (contract broking),

3 the management of individual portfolios of financial instruments for others on a discretionary basis (portfolio management),

4

(a) continuously offering to purchase or sell financial instruments at self-determined prices on an organised market or in a multilateral trading facility,

(b) undertaking trading, often for own account, in an organised and systematic manner outside an organised market or a multilateral trading facility by providing a system accessible to third parties in order to transact business with these third parties,

(c) the purchase and sale of financial instruments for own account as a service for others or

(d) the purchase and sale of financial instruments for own account as a direct or indirect participant in a domestic organised market or multilateral trading facility by means of a high-frequency algorithmic trading strategy characterised by the use of infrastructures that are designed to minimise latency periods through system determination of order initiation, generation, routing or execution without human intervention for individual transactions or orders and by a high volume of intraday reports in the form of orders, quotes or cancellations, also where no service for others is rendered (proprietary trading),

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

³The purchase and sale of financial instruments for own account which does not constitute proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 (proprietary business) is also deemed to be a financial service if the proprietary business is conducted by an undertaking that

- 1 conducts this business commercially or on a scale which requires commercially organised business operations without already being classified as an institution for any other reason, and
- 2 belongs to a group of institutions, a financial holding group, a mixed financial holding group or a financial conglomerate which includes a CRR credit institution.

⁴An undertaking which conducts proprietary business deemed to be a financial service pursuant to sentence 3 is deemed to be a financial services institution. ⁵Sentences 3 and 4 do not apply to resolution agencies pursuant to section 8a (1) sentence 1 of the Financial Market Stabilisation Fund Act (*Finanzmarktstabilisierungsfondsgesetz*).

(1b) Institutions within the meaning of this Act are credit institutions and financial services institutions.

(2) ¹Senior managers within the meaning of this Act are those natural persons who are appointed according to law, articles of association, articles of incorporation or a partnership agreement to manage the business of and represent an institution organised in the form of a legal person or a commercial partnership. ²In exceptional cases, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, hereinafter referred to as BaFin) may also revocably designate as senior manager another person entrusted with the management of an institution's business and empowered to represent it if that person is trustworthy and has the necessary professional knowledge, skills and experience; section 25c (1) shall apply.

(3) ¹Financial undertakings are undertakings which are not institutions, investment management companies or externally managed investment companies, and whose principal activity involves

- 1 acquiring and holding ownership interests,
- 2 acquiring pecuniary claims against payment,
- 3 being an asset-leasing vehicle within the meaning of section 2 (6) sentence 1 number 17,
- 4 (repealed)
- 5 trading in financial instruments for own account,
- 6 advising others on investing in financial instruments,
- 7 advising undertakings on capital structure, industrial strategy and related questions and, in the event of corporate mergers and acquisitions, advising the undertakings and tendering services, or
- 8 arranging loans between credit institutions (money broking).

²The Federal Ministry of Finance (*Bundesministerium der Finanzen*), after consulting the Deutsche Bundesbank, can, by way of a statutory order (*Rechtsverordnung*), designate as financial undertakings other undertakings which principally engage in an activity which is added to the list in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176/338 of 27 June 2013).

(3a) (Repealed)

(3b) (Repealed)

(3c) (Repealed)

(3d) ¹CRR credit institutions within the meaning of this Act are credit institutions within the meaning of Article 4 (1) number 1 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 176/1 of 27 June 2013). ²CRR investment firms within the meaning of this Act are investment firms within the meaning of Article 4 (1) number 2 of Regulation (EU) No 575/2013. ³CRR institutions within the meaning of this Act are CRR credit institutions and CRR investment firms. ⁴Securities trading firms are institutions which are not CRR credit institutions and which conduct banking business within the meaning of subsection (1) sentence 2 number 4 or 10 or provide financial services within the meaning of subsection (1a) sentence 2 numbers 1 to 4, unless the banking business or financial services are confined to foreign exchange or units of account. ⁵Securities trading banks are credit institutions which are not CRR credit institutions and which conduct banking business within the meaning of subsection (1) sentence 2 number 4 or 10 or provide financial services within the meaning of subsection (1a) sentence 2 numbers 1 to 4. ⁶E-money institutions are undertakings within the meaning of section 1a (1) number 5 of the Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz*).

(3e) Stock exchanges or futures exchanges within the meaning of this Act are stock markets or futures markets which are regulated and supervised by competent public authorities, are held regularly and are accessible to the general public either directly or indirectly, including

- 1 their operators if the said operators' principal activity involves the operation of stock markets or futures markets, and
- 2 their systems for safeguarding the settlement of the trades in these markets (clearing houses) that are regulated and supervised by competent public authorities.

(4) The home state is the state in which the head office of an institution is authorised to operate.

(5) (Repealed)

(5a) ¹The European Economic Area (EEA) within the meaning of this Act comprises the member states of the European Union as well as the other signatories to the Agreement on the European Economic Area. ²Non-EEA states within the meaning of this Act are all other states.

(5b) (Repealed)

(6) (Repealed)

(7) Affiliated undertakings are undertakings which have a common parent undertaking.

(7a) (Repealed)

(7b) (Repealed)

(7c) (Repealed)

(7d) (Repealed)

(7e) (Repealed)

(7f) (Repealed)

(8) (Repealed)

(9) ¹A significant holding within the meaning of this Act is a qualifying holding pursuant to Article 4 (1) number 36 of Regulation (EU) No 575/2013 as last amended. ²For calculating the share of the voting rights, section 21 (1) in conjunction with a statutory order pursuant to subsection (3), section 22 (1) to (3a) in conjunction with a statutory order pursuant to subsection (5) and section 23 of the Securities Trading Act (*Wertpapierhandelsgesetz*) as well as section 94 (2) and (3) in conjunction with a statutory order pursuant to subsection (5) number 1 of the Capital Investment Code shall apply *mutatis mutandis*. ³This shall not include the voting rights or capital shares which institutions hold in connection with underwriting business pursuant to subsection (1) sentence 2 number 10, provided that these rights are not exercised or used in any other way to interfere with the issuer's management and they are sold within one year of being acquired.

(10) (Repealed)

(11) ¹Financial instruments within the meaning of subsections (1) to (3) and (17) as well as within the meaning of section 2 (1) and (6) are

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

²Money market instruments are all types of receivables that are normally traded on the money market, with the exception of payment instruments. ³Derivatives are

- 1 futures or options contracts in the form of a purchase, exchange or similar transaction, which are to be settled with a time lag and whose value is derived directly or indirectly from the price or measure of an underlying (forward contracts) in relation to the following underlyings:
 - (a) securities or money market instruments,
 - (b) foreign exchange or units of account,
 - (c) interest rates or other income streams,
 - (d) indices of the underlyings for letters (a), (b) or (c), other financial indices or financial metrics, or
 - (e) derivatives;
- 2 forward contracts in relation to commodities, freight rates, emission permits, climatic or other physical variables, inflation rates or other macroeconomic variables or any other assets, indices or metrics as underlyings where they
 - (a) are either to be settled in cash or give a contracting party the right to demand cash settlement without this right arising as a result of default or another termination event,
 - (b) are entered into on an organised market or in a multilateral trading facility, or
 - (c) have the characteristics of other derivative financial instruments and are not for commercial purposes pursuant to Article 38 (1) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ EU L 241/1), and the conditions under Article 38 (4) of this Regulation are not met,and provided that they are not spot contracts within the meaning of Article 38 (2) of Commission Regulation (EC) No 1287/2006;
- 3 financial contracts for differences;
- 4 futures or options contracts in the form of a purchase, exchange or similar transaction, which are to be settled with a time lag and serve to transfer credit risk (credit derivatives);
- 5 forward contracts in relation to the underlyings listed in Article 39 of Commission Regulation (EC) No 1287/2006 where they meet the conditions laid down in number 2.

(12) (Repealed)

(13) (Repealed)

(14) (Repealed)

(15) (Repealed)

(16) ¹A system within the meaning of section 24b is a written arrangement pursuant to Article 2 letter (a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166/45 of 11 June 1998) as amended by Directive 2009/44/EC (OJ L 146/37 of 10 June 2009), including an arrangement between a participant and an indirectly participating credit institution which has been reported to the European Securities and Markets Authority (ESMA) by the Deutsche Bundesbank or the competent authority of either another member state or a signatory to the Agreement on the European Economic Area. ²The systems of non-EEA states are equivalent to the systems mentioned in sentence 1 provided that they essentially fulfil the requirements set out in Article 2 letter (a) of Directive 98/26/EC. ³A system within the meaning of sentence 1 is also a system whose operator has entered into an arrangement with the operator of another system or the operators of other systems involving the cross-system execution of payment or transfer orders (interoperable system); the other systems participating in the arrangement are likewise interoperable systems.

(16a) A system operator within the meaning of this Act is the party that is legally responsible for operating the system.

(16b) A system's business day encompasses daytime and night-time settlements and includes all events within a system's usual business cycle.

(17) ¹Financial collateral within the meaning of this Act comprises cash balances, monetary amounts, securities, money market instruments as well as credit exposures within the meaning of Article 2 (1) letter (o) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168/43 of 27 June 2002) as amended by Directive 2009/44/EC (OJ L 146/37 of 10 June 2009), and pecuniary claims resulting from an agreement on the basis of which an insurance undertaking within the meaning of section 1 (1) of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) has extended credit in the form of a loan, in each case including any rights or claims in connection therewith, which are provided as collateral under security interest, transfer or title transfer structures on the basis of an arrangement between a collateral taker and a collateral provider belonging to one of the categories listed in Article 1 (2) letters (a) to (e) of Directive 2002/47/EC as amended by Directive 2009/44/EC; in the case of credit exposures incurred by insurance undertakings, this shall apply only if the collateral provider is domiciled in Germany. ²If a collateral provider is a person or corporate entity mentioned in Article 1 (2) letter (e) of Directive 2002/47/EC, then financial collateral is deemed to exist only if the collateral serves as protection for liabilities arising from contracts or from the brokering of contracts concerning

(a) the purchase and sale of financial instruments,

- (b) repurchase transactions, lending transactions and comparable transactions relating to financial instruments, or
- (c) loans to finance the purchase of financial instruments.

³If a collateral provider is a person or corporate entity mentioned in Article 1 (2) letter (e) of Directive 2002/47/EC, then the collateral provider's own capital shares or capital shares in affiliated undertakings within the meaning of section 290 (2) of the Commercial Code (*Handelsgesetzbuch*) are not deemed to be financial collateral; the point in time at which the collateral is provided is decisive. ⁴Collateral providers from non-EEA states are equivalent to the collateral providers mentioned in sentence 1 provided that they essentially correspond to the entities, financial institutions and bodies listed in Article 1 (2) letters (a) to (e) of Directive 2002/47/EC.

(18) Sectoral legislation within the meaning of this Act is the legislation of the European Union in the area of financial supervision, in particular Directives 73/239/EEC, 98/78/EC, 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC as well as Annex V Part A of Directive 2002/83/EC, the national legislation based thereon, in particular this Act, the Insurance Supervision Act, the Securities Trading Act, the Capital Investment Code, the Pfandbrief Act, the Act on Building and Loan Associations (*Gesetz über Bausparkassen*) and the Money Laundering Act (*Geldwäschegesetz*) including the statutory orders enacted in connection therewith as well as any other laws, regulations and administrative provisions enacted in the area of financial supervision.

(19) Financial sector within the meaning of this Act consists of the following sectors:

- 1 the banking and investment services sector: covers credit institutions within the meaning of subsection (1), financial services institutions within the meaning of subsection (1a), investment management companies within the meaning of section 17 of the Capital Investment Code, externally managed investment companies within the meaning of section 1 (13) of the Capital Investment Code, financial undertakings within the meaning of subsection (3), ancillary services undertakings within the meaning of subsection (3c) and corresponding undertakings domiciled outside Germany as well as e-money institutions within the meaning of section 1a (1) number 5 of the Payment Services Oversight Act and payment institutions within the meaning of section 1 (1) number 5 of the Payment Services Oversight Act;
- 2 the insurance sector: covers primary insurance undertakings, reinsurance undertakings within the meaning of section 104a (2) number 3 of the Insurance Supervision Act, insurance holding companies within the meaning of section 104a (2) number 4 of the Insurance Supervision Act and corresponding undertakings domiciled outside Germany.
- 3 (Repealed)

(20) A financial conglomerate is a group or subgroup of undertakings within the meaning of section 1 (2) of the Supervision of Financial Conglomerates Act (*Finanzkonglomerate-Aufsichtsgesetz*).

(21) (Repealed)

(22) (Repealed)

(23) (Repealed)

(24) ¹Refinancing undertakings are undertakings which, for self-refinancing or transferee refinancing purposes, sell assets or claims of transfer thereto from their business operations to the following undertakings or hold these assets or claims in trust for these undertakings:

- 1 special purpose entities,
- 2 refinancing intermediaries,
- 3 credit institutions domiciled in an EEA state,
- 4 insurance undertakings domiciled in an EEA state,
- 5 pension funds or Pensionskassen within the meaning of the Act to Improve Occupational Pension Schemes (Occupational Pensions Act (*Betriebsrentengesetz*)),
or
- 6 one of the bodies mentioned in section 2 (1) number 1, 2 or 3a.

²It is considered to be without any detrimental effect if refinancing undertakings also pass on economic risks without these being accompanied by a devolution of title.

(25) Refinancing intermediaries are credit institutions which purchase assets or claims of transfer thereto from a refinancing undertaking's business operations from refinancing undertakings or other refinancing intermediaries in order to sell them to special purpose entities or refinancing intermediaries; it is considered to be without any detrimental effect if they also pass on economic risks without these being accompanied by a devolution of title.

(26) Special purpose entities are undertakings whose essential purpose is to raise funds or gain other pecuniary benefits by issuing financial instruments or in some other way in order to purchase assets or claims of transfer thereto from a refinancing undertaking's business operations from refinancing undertakings or refinancing intermediaries; it is considered to be without any detrimental effect if they also take over economic risks without these being accompanied by a devolution of title.

(27) Internal approaches within the meaning of this Act are the approaches pursuant to Article 143 (1), Articles 221, 225 and 259 (3), Article 283, Article 312 (2) and Article 363 of Regulation (EU) No 575/2013 as last amended.

(28) Common equity tier 1 capital within the meaning of this Act is the common equity tier 1 capital pursuant to Article 26 of Regulation (EU) No 575/2013 as last amended.

(29) ¹Housing undertakings with a saving facility within the meaning of this Act are undertakings organised in the legal form of a registered cooperative society

- 1 that are neither a CRR institution nor a financial services institution and do not hold an ownership interest in an institution or a financial undertaking,
- 2 whose business purpose lies predominantly in managing their own housing stock,
- 3 which additionally conduct banking business that solely comprises deposit business within the meaning of subsection (1) sentence 2 number 1, although this is restricted to
 - (a) taking savings deposits,
 - (b) issuing registered bonds and
 - (c) setting up interest-accumulating bank accounts for the purposes of section 1 (1) of the Act Governing the Certification of Old-Age Pension Contracts (*Altersvorsorgeverträge-Zertifizierungsgesetz*) of 26 June 2001 (Federal Law Gazette I, page 1310, 1322) as last amended, and
- 4 which do not run a trading book or only where
 - (a) the share of the trading book activities does not normally exceed 5% of the total on- and off-balance-sheet business,
 - (b) the total individual trading book positions do not normally exceed the equivalent of €15 million, and
 - (c) the share of the trading book activities never exceeds 6% of the total on- and off-balance-sheet business and the total of all trading book positions never exceeds the equivalent of €20 million.

²Savings deposits within the meaning of sentence 1 number 3 letter (a) are

- 1 open-ended deposits which
 - (a) are identified as savings deposits through the execution of a document, especially a savings book,
 - (b) are not intended for payment transactions,
 - (c) are not received by incorporated enterprises, cooperative societies, profit-making associations, commercial partnerships or undertakings with a similar legal form domiciled outside Germany, unless these undertakings serve non-profit-making, charitable or ecclesiastical purposes or if the funds received by these undertakings are rent security deposits pursuant to section 551 of the German Civil Code (*Bürgerliches Gesetzbuch*), and
 - (d) have a notice period of at least three months;
- 2 deposits, the savings account terms and conditions for which accord the customer the right to withdraw from his/her deposits with a notice period of three months a specified

maximum amount of no more than €2,000 per savings account and calendar month without giving notice;

3 pecuniary amounts paid on the basis of capital formation legislation.

(30) The risk of excessive leverage within the meaning of this Act is the risk arising from an institution's vulnerability owing to leverage or contingent leverage that may require unexpected corrections to its business plan, including distressed selling of asset items which might result in losses or valuation adjustments to its remaining asset items.

(31) A central counterparty is an undertaking within the meaning of Article 2 number 1 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201/1 of 27 July 2012) as last amended.

(32) Terrorist financing within the meaning of this Act is

- 1 the provision or collection of funds in the knowledge that they are to be or are intended to be used, in full or in part, to carry out, incite or aid and abet
 - (a) an act pursuant to section 129a also in conjunction with section 129b of the German Criminal Code (*Strafgesetzbuch*), or
 - (b) another of the criminal offences outlined in Articles 1 to 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ EC L 164/3),

and

- 2 the perpetration of an act pursuant to section 89a (1) in the cases described in subsection (2) number 4 of the Criminal Code or participation in such an act.

(33) Systemic risk is the risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

(34) Model risk is the potential loss that an institution may incur as a consequence of decisions based principally on the output of internal models owing to errors in the development, implementation or use of such models.

(35) For the purposes of this Act, the definitions in Article 4 (1) numbers 5, 6, 8, 13 to 18, 20 to 22, 29 to 31, 33, 35, 37, 38, 43, 44, 48, 51, 54, 57, 61, 67, 73, 74, 82 and 86 of Regulation (EU) No 575/2013 shall also apply.

Section 1a**Application of Regulation (EU) No 575/2013 in respect of credit institutions and financial services institutions**

(1) Subject to section 2 (8a), (9), (9a), (9b) and (9c), the provisions of Regulation (EU) No 575/2013 and the legal instruments adopted on the basis of the Regulation, the provisions of this Act referring to provisions laid down in Regulation (EU) No 575/2013 as well as the statutory orders issued pursuant to section 10 (1) sentence 1 and section 13 (1) as a supplement to Regulation (EU) No 575/2013 shall apply *mutatis mutandis* to credit institutions that are not CRR institutions or housing undertakings with a saving facility as if these credit institutions were CRR credit institutions.

(2) Subject to section 2 (7) to (9), the provisions of Regulation (EU) No 575/2013 and the legal instruments adopted on the basis of the Regulation, the provisions of this Act referring to provisions laid down in Regulation (EU) No 575/2013 as well as the statutory orders issued pursuant to section 10 (1) sentence 1 and section 13 (1) as a supplement to Regulation (EU) No 575/2013 shall apply *mutatis mutandis* to financial services institutions that are not CRR institutions as if these financial services institutions were CRR investment firms.

**Section 1b
(Repealed)****Section 2
Exceptions**

(1) Subject to subsections (2) and (3), the following are not deemed to be credit institutions:

- 1 the Deutsche Bundesbank;
- 2 the KfW banking group (*Kreditanstalt für Wiederaufbau*);
- 3 the statutory social security funds and the Federal Employment Agency (*Bundesagentur für Arbeit*);
- 3a the public debt administration of the Federal Government, of one of its special funds, of a regional government or of another EEA state and EEA central bank, provided that it does not accept funds from others as deposits or other repayable funds from the public or conduct credit business;
- 3b investment management companies and externally managed investment companies where they undertake collective asset management or, aside from their collective asset management activities, conduct banking business that solely comprises those services or ancillary services cited in section 20 (2) and (3) of the Capital Investment Code;
- 3c EU management companies and foreign AIF management companies, where they undertake collective asset management or, aside from their collective asset

- management activities, conduct banking business that solely comprises those services or ancillary services cited in Article 6 (3) of Directive 2009/65/EC or in Article 6 (4) of Directive 2011/61/EU;
- 4 private and public insurance undertakings;
 - 5 undertakings engaged in pawnbroking, where they conduct this business by granting loans against pledges;
 - 6 undertakings recognised under the Act Concerning Risk Capital Investment Companies (*Gesetz über Unternehmensbeteiligungsgesellschaften*) as risk capital investment companies;
 - 6a (Repealed)
 - 7 undertakings which conduct banking business solely with their parent undertaking or with their subsidiaries or affiliated undertakings;
 - 8 undertakings which, without being involved in cross-border activities, conduct banking business that solely comprises principal broking services on domestic stock exchanges or in domestic multilateral trading facilities within the meaning of section 1 (1a) sentence 2 number 1b on or in which derivatives are traded (derivatives markets) for other members of these markets or trading facilities, provided that clearing members of these markets or trading facilities are liable for the fulfilment of the contracts which the aforementioned undertakings conclude on the said markets or in the said trading facilities;
 - 9 undertakings which engage in principal broking services only in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5, where
 - (a) they are not part of a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or conducting banking business within the meaning of section 1 (1) sentence 2 numbers 1, 2 or 8,
 - (b) the principal broking services, financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 and proprietary business in financial instruments at a group level are of secondary significance to the principal activity, and
 - (c) the principal broking services are provided only for principal activity customers in objective connection with principal activity operations;
 - 10 undertakings which engage in principal broking services solely as a service for providers or issuers of investment products within the meaning of section 1 (2) of the Investment Products Act or of closed-ended AIFs within the meaning of section 1 (5) of the Capital Investment Code;
 - 11 undertakings which engage in underwriting business that solely comprises the assumption of equivalent guarantees within the meaning of section 1 (1) sentence 2 number 10 for providers or issuers of investment products within the meaning of

section 1 (2) of the Investment Products Act or of closed-ended AIFs within the meaning of section 1 (5) of the Capital Investment Code;

- 12 undertakings which conduct safe custody business within the meaning of section 1 (1) sentence 2 number 5 solely for AIFs and thereby engage in limited custody business within the meaning of section 1 (1a) sentence 2 number 12.

(2) Section 14, sections 22a to 22o, section 53b (7) and any arrangements made by virtue of section 46g (1) number 2 and section 46h shall apply to the KfW banking group; section 14 shall apply to the statutory social security funds, the Federal Employment Agency, insurance undertakings and risk capital investment companies.

(3) Undertakings of the types specified in subsection (1) numbers 4 to 6 shall be subject to the provisions of this Act insofar as they conduct banking business which is not part of their characteristic business.

(4) ¹In individual cases, BaFin may decide that sections 1a, 2c, 10 to 18, 24, 24a, 25, 25a to 25e, 26 to 38, 45, 46 to 46c and 51 (1) of this Act shall not apply as a whole to an institution if the undertaking does not require supervision in this respect given the nature of the business which it conducts; on the basis of an exemption pursuant to clause 1, BaFin may also decide that section 6a and section 24c shall similarly not apply to the institution if the undertaking also does not require supervision in this respect given the nature of the business which it conducts. ²A decision of this kind will be published in the Federal Gazette.

(5) (Repealed)

(6) ¹The following are not deemed to be financial services institutions:

- 1 the Deutsche Bundesbank;
- 2 the KfW banking group;
- 3 the public debt administration of the Federal Government, of one of its special funds, of a regional government or of another EEA state and EEA central bank;
- 4 private and public insurance undertakings;
- 5 undertakings which provide financial services within the meaning of section 1 (1a) sentence 2 solely within a corporate group;
- 5a investment management companies and externally managed investment companies where they undertake collective asset management or, aside from their collective asset management activities, provide financial services that solely comprise those services or ancillary services cited in section 20 (2) and (3) of the Capital Investment Code;
- 5b EU management companies and foreign AIF management companies, where they undertake collective asset management or, aside from their collective asset management activities, provide financial services that solely comprise those services

or ancillary services cited in Article 6 (3) of Directive 2009/65/EC or in Article 6 (4) of Directive 2011/61/EU;

- 6 undertakings whose financial service for others comprises solely the administration of an employee participation scheme in themselves or their affiliated undertakings;
- 7 undertakings which solely provide financial services within the meaning of both number 5 and number 6;
- 8 undertakings which provide financial services for others that solely comprise investment advice and investment broking between customers and
 - (a) German institutions,
 - (b) institutions or financial undertakings domiciled in another EEA state which fulfil the conditions of section 53b (1) sentence 1 or (7),
 - (c) undertakings that are treated as undertakings domiciled in the EEA or granted exemption from the provisions by way of a statutory order pursuant to section 53c,
 - (d) investment management companies, externally managed investment companies, EU management companies or foreign AIF management companies or
 - (e) providers or issuers of investment products within the meaning of section 1 (2) of the Investment Products Act

where these financial services are confined either to units or shares in German collective investment schemes which are issued by an investment management company that has been granted authorisation pursuant to section 7 or section 97 (1) of the Investment Act (*Investmentgesetz*) in the version in force up to 21 July 2013 which is still valid for the period stipulated in section 345 (2) sentence 1, subsection (3) sentence 2, in connection with subsection (2) sentence 1, or subsection (4) sentence 1 of the Capital Investment Code or authorisation pursuant to sections 20 and 21 or sections 20 and 22 of the Capital Investment Code, or to units or shares in EU collective investment schemes or foreign AIFs which may be marketed under the Capital Investment Code, or to investment products within the meaning of section 1 (2) of the Investment Products Act, and the undertakings are not authorised to obtain ownership or possession of funds or shares of customers in providing such financial services, unless the undertaking applies for and is granted appropriate authorisation pursuant to section 32 (1); units or shares in hedge funds within the meaning of section 283 of the Capital Investment Code shall not be deemed to be units in collective investment schemes within the meaning of this provision;

- 9 undertakings which, without being involved in cross-border activities, conduct proprietary business on derivatives markets within the meaning of subsection (1) number 8 and trade on spot markets only for the purpose of hedging these positions, which engage in proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 letters (a) to (c) or contract broking only for other members of these derivatives markets or which determine prices for other members of these derivatives

- markets through proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 letter (a) as a market maker within the meaning of section 23 (4) of the Securities Trading Act, provided that clearing members of these markets or trading facilities are liable for the fulfilment of the contracts which the aforementioned undertakings conclude;
- 10 members of independent professions who provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 only occasionally within their client relationships as self-employed professionals and who belong to a professional chamber having the legal form of a public-law entity whose professional rules do not exclude the provision of financial services;
 - 11 undertakings which conduct proprietary business in financial instruments or provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 letters (a) to (c) only in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5, where
 - (a) they are not part of a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or conducting banking business within the meaning of section 1 (1) sentence 2 numbers 1, 2 or 8,
 - (b) the provision of financial services at a group level is of secondary significance to the principal activity, and
 - (c) the financial services relating to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 are provided only for principal activity customers in objective connection with principal activity operations;
 - 12 undertakings whose sole financial service within the meaning of section 1 (1a) sentence 2 is dealing in foreign notes and coins, unless their principal activity is foreign currency dealing;
 - 13 undertakings whose principal activity involves conducting proprietary business and proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 letters (a) to (c) in commodities or derivatives within the meaning of section 1 (11) sentence 4 number 2 relating to commodities, provided that these undertakings do not belong to a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or conducting banking business pursuant to section 1 (1) sentence 2 numbers 1, 2 or 8;
 - 14 (Repealed)
 - 15 undertakings whose sole financial service within the meaning of section 1 (1a) sentence 2 comprises providing investment advice as part of another occupational activity and which are not remunerated separately for providing this investment advice;

- 16 operators of organised markets which, apart from operating a multilateral trading facility, do not provide any other financial services within the meaning of section 1 (1a) sentence 2;
- 17 undertakings whose sole financial service within the meaning of section 1 (1a) sentence 2 comprises carrying out financial leasing activities, if they act only as an asset-leasing vehicle for a single leased asset, do not make their own business policy decisions and are managed by an institution domiciled in an EEA state which is authorised to conduct financial leasing operations under the laws of the home member state;
- 18 undertakings whose only financial service comprises carrying out asset management activities and whose parent undertaking is the KfW banking group or an institution within the meaning of sentence 2. An institution within the meaning of sentence 1 is a financial services institution which has authorisation to engage in asset management activities, or a CRR institution domiciled in another EEA state within the meaning of section 53b (1) sentence 1 which, in its home member state, is authorised to conduct business comparable with that described in section 1 (1a) sentence 2 number 11, or an institution domiciled in a non-EEA state which, pursuant to subsection (4), is exempt from the authorisation requirement pursuant to section 32 with regard to the business specified in section 1 (1a) sentence 2 number 11;
- 19 undertakings which engage in placement business solely for providers or issuers of investment products within the meaning of section 1 (2) of the Investment Products Act or of closed-ended AIFs within the meaning of section 1 (5) of the Capital Investment Code, and
- 20 undertakings which do not provide any financial services other than portfolio management and asset management services, provided that the portfolio management and asset management activities are limited only to investment products within the meaning of section 1 (2) of the Investment Products Act or closed-ended AIFs within the meaning of section 1 (5) of the Capital Investment Code.

²Entities and undertakings within the meaning of sentence 1 numbers 3 and 4 shall be subject to the provisions of this Act insofar as they provide financial services which are not part of their characteristic business.

(7) Financial services institutions which do not provide any financial services within the meaning of section 1 (1a) sentence 2 other than non-EEA deposit broking and foreign currency dealing shall not be subject to the provisions of sections 10, 10c to 10i, 11 to 18 and 24 (1) number 9, sections 24a and 25a (5), sections 26a and 33 (1) sentence 1 number 1, sections 45 and 46 (1) sentence 2 numbers 4 to 6 and sections 46b and 46c of this Act as well as Articles 24 to 403 and Articles 411 to 455 of Regulation (EU) No 575/2013.

(7a) Undertakings which provide solely financial services pursuant to section 1 (1a) sentence 2 number 9 or number 10 shall not be subject to the provisions of sections 10, 10c to 10i, 11 to 13c, 15 to 18 and 24 (1) numbers 4, 6, 9, 11, 14, 14a, 16 and 17, subsection (1a) number

5, sections 25 and 25a (5), sections 26a and 33 (1) sentence 1 number 1, sections 45 and 46 (1) sentence 2 numbers 4 to 6 and sections 46b and 46c of this Act as well as Articles 24 to 455 and Articles 465 to 519 of Regulation (EU) No 575/2013.

(8)

- 1 Investment advisers and investment brokers who
 - (a) in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers, and
 - (b) do not trade in financial instruments for own account, as well as
- 2 undertakings which are to be classified as institutions owing to the counter-exception for performing cross-border transactions laid down in subsection (1) number 8 or subsection (6) number 9

shall not be subject to the provisions of sections 10, 10c to 10i, 11, 13, 14 to 18, 24 (1) numbers 14, 14a, 16 and 17, subsection (1a) number 5, section 25a (2) and (5) and sections 26a and 45 of this Act as well as Articles 39, 41, 50 to 403 and Articles 411 to 455 of Regulation (EU) No 575/2013.

(8a) Subject to section 64h (7), the requirements of section 25a (5) and section 26a of this Act and Articles 39, 41 and 89 to 386 of Regulation (EU) No 575/2013 shall not apply to institutions whose principal activity solely comprises conducting banking business or providing financial services in connection with derivatives pursuant to section 1 (11) sentence 4 numbers 2, 3 and 5.

(8b) Portfolio managers, contract brokers and asset managers 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 own account shall not be subject to the provisions of section 10 (1), sections 10c to 10i, 11, 13, 24 (1) numbers 14, 14a and 16, subsection (1a) number 5, section 25a (2) and (5) and section 26a of this Act as well as Articles 41, 89 to 91, 95 (1) and (3), Articles 96, 98 to 403 and Articles 411 to 455 of Regulation (EU) No 575/2013.

(9) Articles 387 to 403 of Regulation (EU) No 575/2013 shall not apply to principal brokers and proprietary traders acting for own account solely for the purpose of fulfilling or executing a customer order or of possible access to a clearing and settlement system or a recognised stock exchange where they are acting in their own name for the account of others or are executing a customer order.

(9a) ¹Credit institutions which solely have authorisation to act in the capacity of a central counterparty within the meaning of section 1 (1) sentence 2 number 12 shall not be subject to the provisions of sections 2c, 6b, 10, 10c to 10i, 11, 12a to 18, 24 (1) numbers 6, 10, 14, 14a and 16, subsection (1a) numbers 4 to 8, sections 24a, 24c, 25 (1) sentence 2, sections 25a to 25e, 26a, 32, 33, 34, 36 (3) sentences 1 and 2 and sections 45 and 45b of this Act as

well as Articles 25 to 455 of Regulation (EU) No 575/2013. ²Section 24 (1) number 9 shall apply subject to the proviso that the fall in initial capital to below the minimum requirements pursuant to Article 16 of Regulation (EU) No 648/2012 is to be reported.

(9b) ¹Where a credit institution carries out activities within the meaning of section 1 (1) sentence 2 number 12 and either conducts other banking business or provides other financial services that require authorisation pursuant to this Act, the activities within the meaning of section 1 (1) sentence 2 number 12 shall be subject to the provisions of subsection (9a); these credit institutions shall be responsible for ensuring compliance with both the requirements pursuant to this Act and the requirements pursuant to Regulation (EU) No 648/2012. ²With regard to the initial capital requirements pursuant to section 33 (1) of this Act as well as Article 16 (1) of Regulation (EU) No 648/2012, the credit institutions concerned shall fulfil the more stringent requirements in each individual case. ³The reporting requirements and duty to provide information laid down both in section 2c (1) of this Act as well as in Article 31 (2) of Regulation (EU) No 648/2012 may be fulfilled in combination in a joint report or notification.

(9c) Surety banks (*Bürgschaftsbanken*) within the meaning of section 5 (1) number 17 of the Corporation Tax Act (*Körperschaftsteuergesetz*) shall not be subject to the provisions of sections 10d and 24 (1) number 16 of this Act and Articles 411 to 430 of Regulation (EU) No 575/2013.

(9d) CRR investment firms shall not be subject to the provisions of Articles 411 to 428 of Regulation (EU) No 575/2013.

(9e) (Repealed)

(10) ¹An undertaking which does not conduct any banking business within the meaning of section 1 (1) sentence 2 and provides financial services that comprise only investment broking, placement business or investment advice solely for the account and under the liability of a CRR credit institution or a securities trading firm domiciled in Germany or operating in Germany in accordance with section 53b (1) sentence 1 or subsection (7) (tied agent) shall not be deemed to be a financial services institution, but rather a financial undertaking if this is reported to BaFin by the CRR credit institution or securities trading firm as the liable undertaking. ²The activities of the tied agent shall be imputed to the liable undertaking. ³If there is any change in the circumstances reported by the liable undertaking, the new circumstances shall be reported to BaFin without delay. ⁴More detailed provisions on the contents of the reports pursuant to sentences 1 and 3 as well as the accompanying documentation and evidence can be issued by means of a statutory order pursuant to section 24 (4). ⁵BaFin shall forward the reports pursuant to sentences 1 and 3 to the Deutsche Bundesbank. ⁶BaFin shall keep a public register of the tied agents reported to it pursuant to this subsection on its website; the names of the liable undertaking and the tied agents as well as the date on which the activity pursuant to sentence 1 starts and ends shall be entered in this register. ⁷More detailed provisions on the prerequisites for entry in the register, the contents and the keeping of the register can be issued by means of a statutory

order pursuant to section 24 (4), in particular the liable undertaking can be granted write access for the register page to be set up for this undertaking as well as given responsibility for ensuring the accuracy and up-to-dateness of this page. ⁸BaFin may prohibit a liable undertaking, which has not duly selected or monitored its tied agents or has breached the duties entrusted to it in connection with the keeping of the register, from integrating tied agents within the meaning of sentences 1 and 2 into the undertaking.

(11) (Repealed)

(12) ¹The requirements of sections 25a, 25b and 33 (1) numbers 1 to 4 as well as the reporting requirements pursuant to section 2c (1) and (4) as well as section 24 (1) numbers 1, 2 and 11 and subsection (1a) number 2 shall apply *mutatis mutandis* to operators of organised markets domiciled outside Germany whose sole financial service comprises operating a multilateral trading facility in Germany. ²The requirements mentioned in sentence 1 shall also apply *mutatis mutandis* to entities responsible for a domestic stock exchange whose sole financial service, apart from over-the-counter trade, comprises operating a multilateral trading facility in Germany. ³It shall be assumed that the executive directors of a domestic stock exchange and persons who actually manage the business of a foreign organised market fulfil the requirements stipulated in section 33 (1) numbers 2 and 4. ⁴BaFin's powers pursuant to sections 2c and 25a (2) sentence 1 as well as sections 44 to 46h shall apply *mutatis mutandis*. ⁵BaFin may prohibit the persons mentioned in sentence 1 from operating a multilateral trading facility in the cases described in section 35 (2) numbers 4 and 6 as well as if they do not fulfil the requirements stipulated in section 33 (1) sentence 1 numbers 1 to 4. ⁶The persons mentioned in sentence 1 shall notify BaFin of the commencement of operations without delay.

Section 2a

Exceptions for institutions belonging to a group and institutions which are members of institutional protection schemes

(1) ¹Institutions may submit an application to BaFin requesting an exemption pursuant to Article 7 of Regulation (EU) No 575/2013 as last amended. ²The 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) ¹Where 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. ²The application shall be accompanied by appropriate documentation to prove that the conditions pursuant to sentence 1 have been met.

(3) ¹Institutions may submit an application to BaFin requesting an exemption pursuant to Article 8 of Regulation (EU) No 575/2013 as last amended. ²The 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) ¹Where the conditions for an exemption pursuant to Article 8 of Regulation (EU) No 575/2013 have been met and exemption pursuant to Article 8 of Regulation (EU) No 575/2013 has been granted, 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 liquidity risk. ²The application shall be accompanied by appropriate documentation to prove that the conditions pursuant to sentence 1 have been met.

(5) The exemption pursuant to subsection (1) or (2) shall be deemed to have been granted in the case of institutions and superordinated undertakings which made use of the arrangement within the meaning of section 2a (1), (5) or (6) in the version in force up to 31 December 2013.

(6) ¹BaFin may require an institution or a superordinated undertaking to furnish the necessary proof of compliance with the conditions even after exemption has been granted pursuant to subsections (1) to (4) or where exemption remains valid pursuant to subsection (5). ²It may also require an institution or a superordinated undertaking to put in place arrangements which are appropriate and necessary to remedy existing deficiencies and may set a suitable deadline for compliance. ³If the institution fails to furnish proof or does not do so within the prescribed period or fails to remedy deficiencies or does not do so within the prescribed period, BaFin may revoke the exemption or require the institution to reapply the provisions to which the exemption related.

Section 2b

Legal form

(1) Credit institutions which require authorisation pursuant to section 32 (1) may not be operated in the legal form of a commercial sole proprietorship.

(2) ¹In the case of securities trading firms in the legal form of a commercial sole proprietorship or commercial partnership, the risk assets of the proprietor or general partners shall be included in the assessment of the institution's solvency pursuant to Article 92 of Regulation (EU) No 575/2013; however, the personal assets of the proprietor or partners shall be excluded when calculating the institution's own funds. ²Where such an institution is operated in the legal form of a commercial sole proprietorship, the proprietor shall put in place appropriate arrangements to protect his/her customers in the event that the institution discontinues its business operations owing to the proprietor's death or legal incapacity or for other reasons.

Section 2c

Holders of significant holdings

(1) ¹Anyone who intends to acquire a significant holding in an institution, either alone or in concert with other persons or undertakings (proposed acquirer), shall report this intention in writing to BaFin and the Deutsche Bundesbank without delay in accordance with sentence 2. ²In this report, the proposed acquirer shall give the relevant information and documentation, which are to be specified in more detail by way of a statutory order pursuant to section 24 (4), germane to the amount of the holding and to the establishment of the significant influence, as well as to the assessment of his/her trustworthiness and examination of the further grounds for prohibition pursuant to subsection (1b) sentence 1, and name the individuals or undertakings from whom or which he/she intends to acquire the corresponding capital shares. ³The statutory order may provide, in particular also in individual case decisions or as a general rule, that the proposed acquirer shall present the documentation specified in section 32 (1) sentence 2 number 6 letters (d) and (e). ⁴Where the proposed acquirer is a legal person or a commercial partnership, the report shall contain the relevant information germane to assessing the trustworthiness of its legal representatives or representatives pursuant to the articles of association or articles of incorporation, or of its general partners. ⁵The holder of a significant holding shall report without delay every newly appointed legal representative or representative pursuant to the articles of association or articles of incorporation, or new general partner to BaFin and the Deutsche Bundesbank in writing, together with the relevant information germane to assessing his/her trustworthiness. ⁶The holder of a significant holding shall, moreover, notify BaFin and the Deutsche Bundesbank in writing without delay if he/she intends, either alone or in concert with other persons or undertakings, to increase the amount of the significant holding in such a way that the thresholds of 20%, 30% or 50% of the voting rights or capital are reached or exceeded, or that the institution comes under his/her control. ⁷BaFin shall provide the party required to submit the report with written acknowledgement of receipt of a complete report pursuant to sentence 1 or sentence 6 without delay, at the latest however within two working days of receipt thereof.

(1a) ¹BaFin shall assess the report pursuant to subsection (1) within 60 working days of the date on its letter acknowledging receipt of a complete report (assessment period). ²In the acknowledgement provided pursuant to subsection (1) sentence 7, BaFin shall inform the party required to submit the report of the date on which the assessment period will end. ³BaFin may make a written request for further information which it requires to complete the assessment no later than on the 50th working day of the assessment period. ⁴The request shall be made in writing, specifying the additional information required. ⁵BaFin shall provide the party required to submit the report with written acknowledgement of receipt of this additional information without delay, at the latest however within two working days of receipt thereof. ⁶The assessment period shall be suspended from the time when the request for further information is made until BaFin receives this information. ⁷In the event of a suspension pursuant to sentence 6, the assessment period shall not exceed 80 working days. ⁸BaFin may request completion or clarification of the information; this shall not result in a further suspension of the assessment period. ⁹Notwithstanding sentence 7, the

assessment period may be extended to up to 90 working days in the event of a suspension if the party required to submit the report

- 1 is situated or supervised in a non-EEA state, or
- 2 is a natural person or undertaking not subject to supervision under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302/32 of 17 November 2009), Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2002 on reinsurance, or Directive 2013/36/EU.

(1b) ¹BaFin may oppose the proposed acquisition of or increase in the significant holding within the assessment period if facts are known which warrant the assumption that

- 1 the party required to submit the report or, if it is a legal person, a legal representative or representative pursuant to the articles of association or articles of incorporation, or, if it is a commercial partnership, a partner, is not trustworthy or for any other reason does not satisfy the requirements to be set in the interests of the sound and prudent management of the institution; in case of doubt, this shall also apply if facts are known which warrant the assumption that the funds raised in order to acquire the significant holding were secured by means of an action which objectively constitutes a criminal offence;
- 2 the institution will not be able to comply and continue to comply with the prudential requirements based, in particular, on Directive 2013/36/EU, Regulation (EU) No 575/2013 as last amended, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, or the institution, through acquiring or increasing the significant holding would be integrated into a corporate network with the holder of the significant holding which, owing to the structure of cross-

shareholdings or because of inadequate economic transparency, would hamper the effective supervision of the institution or the effective exchange of information among the competent authorities or the allocation of responsibilities among the said authorities;

- 3 the acquisition of or increase in the significant holding would make the institution a subsidiary of an institution domiciled in a non-EEA state that is not effectively supervised in the state where it is domiciled or has its head office or whose competent supervisory body is not prepared to cooperate satisfactorily with BaFin;
- 4 the future senior manager is not trustworthy or does not have the necessary professional knowledge, skills and experience;
- 5 in connection with the proposed acquisition of or increase in the holding, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or the acquisition of or increase in the holding could aggravate the risk of such occurring, or
- 6 the party required to submit the report does not have the requisite financial soundness; this is especially the case if, owing to its capital adequacy or asset situation, the party required to submit the report is unable to fulfil the special requirements laid down by law with regard to an institution's own funds and liquidity.

²BaFin may also oppose the acquisition of or increase in the holding if the information pursuant to subsection (1) sentence 2 or sentence 6 or the additional information required pursuant to subsection (1a) sentence 3 is incomplete or incorrect or does not meet the requirements laid down in the statutory order pursuant to section 24 (4). ³BaFin may neither impose prior conditions in respect of the size of the holding to be acquired or the intended increase in the holding nor examine the proposed acquisition in terms of the economic needs of the market. ⁴If, after completing its assessment, BaFin decides to oppose the acquisition of or increase in the holding, it shall inform the party required to submit the report of its decision in writing within two working days and in observance of the assessment period, stating the reasons therefor. ⁵Any comments and reservations on the part of the competent authorities responsible for the party required to submit the report shall be cited in the decision; opposition is permissible only for the reasons given in sentences 1 and 2. ⁶If the acquisition of or increase in the holding is not opposed in writing within the assessment period, then the acquisition or increase may be executed; this is without prejudice to BaFin's rights pursuant to subsection (2). ⁷BaFin may set a deadline after which the party required to submit the report shall provide notification of whether or not the proposed acquisition of or increase in the holding has been executed. ⁸Upon expiry of this deadline, the party required to submit the report shall notify BaFin without delay.

(2) ¹BaFin may prohibit the holder of a significant holding as well as the undertakings that it controls from exercising the voting rights and order that the capital shares may be used only with BaFin's consent if

- 1 the prerequisites for a prohibition order pursuant to subsection (1b) sentence 1 or sentence 2 exist,
- 2 the holder of the significant holding has not fulfilled its duty pursuant to subsection (1) to give BaFin and the Deutsche Bundesbank prior notification of its intention and has not made such notification subsequently by a deadline set by BaFin, or
- 3 the holding has been acquired or increased contrary to an enforceable prohibition pursuant to subsection (1b) sentence 1 or sentence 2.

²In the event of a prohibition pursuant to sentence 1, the court having jurisdiction at the institution's domicile – at the request of BaFin, the institution or a holder of an interest in the institution – shall appoint a trustee to whom it shall transfer the exercise of voting rights. ³In exercising the voting rights, the trustee shall take due account of the interests of a sound and prudent management of the institution. ⁴Over and above the measures pursuant to sentence 1, BaFin may commission the trustee to sell the capital shares insofar as they establish a significant holding if the holder of the significant holding does not provide BaFin with proof of a trustworthy buyer by an appropriate deadline set by BaFin; the holders of the capital shares shall cooperate in the sale to the extent necessary. ⁵If the prerequisites specified in sentence 1 no longer exist, BaFin shall apply for the appointment of the trustee to be revoked. ⁶The trustee shall be entitled to the reimbursement of reasonable expenses and remuneration for his/her activities. ⁷The court shall determine such expenses and remuneration at the trustee's request; an appeal on a point of law against the fixing of remuneration by the court shall not be permissible. ⁸The institution and the relevant holder of the significant holding shall be jointly and severally liable for the costs arising from the appointment of the trustee, the expenses that he/she is to be granted and his/her remuneration. ⁹BaFin shall advance such expenses and remuneration.

(3) ¹Anyone who intends to dispose of a significant holding in an institution or to reduce the amount of his/her significant holding below the thresholds of 20%, 30% or 50% of the voting rights or the capital held, or to change the holding in such a way that the institution ceases to be a controlled undertaking, shall report this in writing to BaFin and the Deutsche Bundesbank without delay. ²The intended residual level of the holding shall be indicated in the report. ³BaFin may set a deadline after which the person or commercial partnership who has submitted the report pursuant to sentence 1 shall provide notification of whether or not the intended reduction or change in the holding has been executed. ⁴Upon expiry of this deadline, the person or commercial partnership who has submitted the report pursuant to sentence 1 shall notify BaFin without delay.

(4) ¹BaFin shall temporarily oppose or limit the acquisition of a direct or indirect holding in an institution, through which the institution would become a subsidiary of an undertaking domiciled in a non-EEA state, if a decision to this effect has been taken by the European Commission pursuant to Article 147 (2) of Directive 2013/36/EU or Article 15 (3) sentence 2 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ EU L 145/1, 2005 OJ EU L 45/18 (Markets in Financial Instruments Directive)). ²BaFin's temporary opposition or limitation shall not exceed three

months from the date of the decision. ³If the Council of the European Union decides to extend the period pursuant to sentence 2, BaFin shall take due account of this extension and extend its temporary opposition or limitation accordingly.

Section 2d

Management bodies of financial holding companies and mixed financial holding companies

(1) Any persons who actually manage the business of a financial holding company or a mixed financial holding company shall be trustworthy, have the professional knowledge, skills and experience necessary to manage the company, and commit sufficient time to the performance of their functions.

(2) In the case of financial holding companies and mixed financial holding companies which have been classified as the superordinated undertaking pursuant to section 10a (2) sentence 2 or sentence 3, BaFin can demand that the persons within the meaning of subsection (1) are removed and prohibit them from carrying out their activities if

- 1 they do not fulfil the conditions of subsection (1), or
- 2 they have intentionally or recklessly contravened the provisions of this Act, the regulations issued to implement this Act or orders issued by BaFin, and if they persist in such behaviour despite having been duly cautioned by BaFin.

Section 2e

Exceptions for mixed financial holding companies

(1) Where a mixed financial holding company is subject to equivalent provisions under Directive 2006/48/EC, in particular with regard to risk-based prudential supervision, BaFin may, after consulting the competent authorities responsible for the prudential supervision of subsidiaries, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under Directive 2006/48/EC and Directive 2009/138/EC, in particular with regard to risk-based prudential supervision, BaFin may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions of Directive 2006/48/EC relating to the most significant financial sector within the meaning of section 8 (2) of the Supervision of Financial Conglomerates Act.

Section 3 Prohibited business

(1) The following are prohibited:

- 1 conducting deposit business if the majority of the depositors are persons employed by the undertaking (company savings banks) and no other banking business is conducted which exceeds the scale of such deposit business;
- 2 accepting sums of money if the majority of the investors have a legal claim to be granted loans or supplied with items on credit out of these sums of money (special-purpose savings undertakings); this does not apply to building and loan associations (*Bausparkassen*);
- 3 conducting lending business or deposit business if, by agreement or in line with standard business practice, it is impossible or extremely difficult to withdraw the loan amount or the deposits in cash.

(2) ¹CRR credit institutions and undertakings that belong to a group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution shall be prohibited from conducting the business specified in sentence 2 as from 12 months after exceeding one of the following thresholds if,

- 1 in the case of CRR credit institutions and of groups of institutions, financial holding groups, mixed financial holding groups or financial conglomerates which include a CRR credit institution that report according to international accounting standards within the meaning of section 315a of the German Commercial Code, the positions classified as financial assets that are held for trading or available for sale within the meaning of Article 1 in conjunction with number 9 of IAS 39 in the Annex to Regulation (EC) No 1126/2008 of the European Commission of 3 November 2008 as last amended exceed the value of €100 billion as at the reporting date of the preceding financial year, or, where the total assets of the CRR credit institution or of the group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution amount to at least €90 billion as at the reporting date in each of the three preceding financial years, they exceed 20% of the total assets from the preceding financial year of the CRR credit institution, group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution, unless business is conducted in a financial trading institution within the meaning of section 25f (1); or,
- 2 in the case of other CRR credit institutions and groups of institutions, financial holding groups, mixed financial holding groups or financial conglomerates which include a CRR credit institution that report according to the German Commercial Code, the positions assignable to the trading portfolio pursuant to section 340e (3) of the Commercial Code and to the liquidity reserve pursuant to section 340e (1) sentence 2 of the Commercial Code exceed the value of €100 billion as at the reporting date in the preceding financial year, or, where the total assets of the CRR credit institution or

of the group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution amount to at least €90 billion as at the reporting date in each of the three preceding financial years, they exceed 20% of the total assets from the preceding financial year of the CRR credit institution, the group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution, unless business is conducted in a financial trading institution within the meaning of section 25f (1).

²Prohibited business pursuant to sentence 1 comprises

- 1 proprietary business;
- 2 lending and guarantee business with
 - (a) hedge funds within the meaning of section 283 (1) of the Capital Investment Code (*Kapitalanlagegesetzbuch*) or funds of hedge funds within the meaning of section 225 (1) of the Capital Investment Code or, where the business is carried out in connection with managing a hedge fund or fund of hedge funds, with their management companies;
 - (b) EU AIFs or foreign AIFs within the meaning of the Capital Investment Code which use leverage on a substantial basis within the meaning of Article 111 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83/1 of 22 March 2013) or, if business is conducted in the context of managing the EU AIF or foreign AIF, with their EU AIF management companies or foreign AIF management companies;
- 3 proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 letter (d) with the exception of market making activities within the meaning of Article 2 (1) letter (k) of Regulation (EU) No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86/1 of 24 March 2012) (market making activities); this is without prejudice to BaFin's power to make case-by-case rulings pursuant to subsection (4) sentence 1.

³The following does not fall under business within the meaning of sentence 2:

- 1 business intended to hedge business with customers other than AIF or management companies within the meaning of sentence 2 number 2;
- 2 business designed to manage the interest rate, currency, liquidity and credit risk of the CRR credit institution, group of institutions, financial holding group, mixed financial holding group or affiliated network of institutions; in this context, an affiliated network of institutions comprises institutions belonging to the same institutional protection scheme within the meaning of Article 113 number 7 letter (c) of the Regulation of the

European Parliament and of the Council on prudential requirements for credit institutions and investment firms;

- 3 business connected with purchasing and selling long-term participations as well as business not concluded for the purpose of exploiting existing or expected differences between purchase and sale prices or fluctuations in market rates, prices, values or interest rates in the short term in order to generate profits.

(3) ¹CRR credit institutions and undertakings belonging to a group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution and which exceed one of the thresholds specified in section 3 (2) sentence 1 number 1 or 2, shall,

- 1 no later than six months after exceeding one of the thresholds, identify by means of a risk analysis which of its business activities within the meaning of subsection (2) sentence 1 are prohibited, and,
- 2 no later than 12 months after exceeding one of the thresholds, discontinue such prohibited business identified pursuant to sentence 1 number 1 which is already being conducted or transfer it to a financial trading institution.

²The risk analysis pursuant to sentence 1 number 1 shall be plausible, comprehensive and comprehensible and shall be documented in writing. ³In individual cases, BaFin may extend the period specified in sentence 1 number 2 by up to 12 months; any application for an extension shall contain the reasons therefor.

(4) ¹BaFin may prohibit a CRR credit institution of an undertaking belonging to a group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution, irrespective of whether the business pursuant to subsection (2) exceeds the threshold specified in subsection (2) sentence 1, from conducting the following business and order it to discontinue said business or transfer it to a financial trading institution within the meaning of section 25f (1) if there is concern that this business, especially in relation to the volume of other business, the earnings or risk structure of the CRR credit institution or undertaking belonging to a group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution, could endanger the solvency of the CRR credit institution or undertaking belonging to a group of institutions, financial holding group, mixed financial holding group or financial conglomerate which includes a CRR credit institution:

- 1 market making activities;
- 2 other business within the meaning of subsection (2) sentence 2 or business involving financial instruments which, by their nature, are comparable in terms of the scale of their risk with business specified in subsection (2) sentence 2 or sentence 1 number 1.

²When issuing an order within the meaning of sentence 1, BaFin shall grant the institution an appropriate period of time.

Section 4
Decision by BaFin

¹In cases of doubt, BaFin will decide whether an undertaking is subject to the provisions of this Act. ²Its decisions shall be binding upon the administrative authorities.

Division 2 FEDERAL FINANCIAL SUPERVISORY AUTHORITY (BAFIN)

Section 5
(Repealed)

Section 6
Functions

(1) ¹BaFin exercises supervision over institutions pursuant to the provisions of this Act, the statutory orders enacted in connection therewith, Regulation (EU) No 575/2013 as last amended and legal acts enacted on the basis of Regulation (EU) No 575/2013 and Directive 2013/36/EU. ²BaFin is the competent authority for the application of Article 458 of Regulation (EU) No 575/2013 as well as the competent authority pursuant to Article 4 (1) of Directive 2013/36/EU. ³The Deutsche Bundesbank is the competent authority pursuant to Article 4 (1) of Directive 2013/36/EU within the scope of the functions assigned to it pursuant to section 7 (1).

(1a) BaFin exercises supervision over central counterparties additionally pursuant to Regulation (EU) No 648/2012 and to the legal acts enacted on the basis thereof.

(2) BaFin shall counteract undesirable developments in the lending and financial services sector which may endanger the safety of the assets entrusted to institutions, impair the proper conduct of banking business or provision of financial services or entail major disadvantages for the economy as a whole.

(3) ¹BaFin may, as part of its statutory mandate, issue orders to institutions and their senior managers that are appropriate and necessary to prevent or stop violations of regulatory provisions or to prevent or overcome undesirable developments at an institution which could endanger the safety of the assets entrusted to the institution or impair the proper conduct of its banking business or provision of financial services. ²The power to issue orders pursuant to sentence 1 also applies vis-à-vis financial holding companies or mixed financial holding companies as well as vis-à-vis the persons who actually manage the business of these companies.

(4) In exercising its functions, BaFin shall duly consider the potential impact of its decisions on the stability of the financial system in the EEA states concerned.

(5) (Repealed)

Section 6a

Special functions

(1) If there is evidence indicating that deposits accepted by an institution, other assets entrusted to an institution or a financial transaction serve or would serve, if a financial transaction were to be executed, the purpose of preparing a serious act of violent subversion pursuant to section 89a (1) and (2) number 4 of the German Criminal Code or financing a terrorist group pursuant to section 129a also in conjunction with section 129b of the Criminal Code, then BaFin may

- 1 issue instructions to the institution's management;
- 2 prohibit the institution from allowing funds to be withdrawn or transferred from an account or safe custody account held with it;
- 3 prohibit an institution from carrying out other financial transactions.

(2) Indications shall notably be construed as evidence within the meaning of subsection (1) where the holder of an account or a safe custody account, the persons authorised to draw on the said account or an institution's customer is a natural or legal person or an association of persons without legal personality whose name is on the list of the European Council adopted in connection with combating terrorism as part of the Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ EC L 344/93) as last amended.

(3) In individual cases BaFin may release assets that are subject to an order issued pursuant to subsection (1) at the request of the natural or legal person concerned or of an association of persons without legal personality insofar as these assets serve to cover the minimum subsistence costs of the person or its family members or to pay pension benefits, maintenance payments or similar purposes.

(4) An order issued pursuant to subsection (1) shall be repealed as soon and insofar as the reason for issuing it no longer exists.

(5) The institution or any other aggrieved party may object to an order issued pursuant to subsection (1).

(6) This is without prejudice to the right to order restrictions on capital movements and payments pursuant to section 4 (1) of the Foreign Trade and Payments Act (*Aussenwirtschaftsgesetz*).

Section 6b

Supervisory review and evaluation

(1) ¹As part of its prudential supervisory tasks, BaFin reviews the arrangements, strategies, processes and mechanisms implemented by an institution to comply with the prudential requirements, and evaluates

- 1 the risks to which the 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, and
- 2 the risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 and recommendations of the European Systemic Risk Board (ESRB), where appropriate.

²To this end it cooperates with the Deutsche Bundesbank pursuant to section 7.

(2) ¹On the basis of the review and evaluation, BaFin 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. ²In addition to credit, market and operational risk, BaFin takes particular account of

- 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 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 the exposure to and management of concentration risk by an institution, including its compliance with the prudential requirements;
- 4 the impact of diversification effects and how such effects are factored into an institution's risk measurement system;
- 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 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, BaFin monitors whether an institution provides implicit support to a transaction;
- 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 the results of prudential stress tests pursuant to subsection (3) or Article 32 of Regulation (EU) No 1093/2010;
- 9 the geographical location of an institution's exposures;

- 10 the business model;
- 11 an institution's interest rate risk arising from non-trading activities;
- 12 the processes and mechanisms for determining and ensuring an institution's internal capital adequacy pursuant to section 25a;
- 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 ratio of an institution and of the arrangements, strategies, processes and mechanisms implemented by the institution to manage the risk of excessive leverage, BaFin takes account of the institution's business model;
- 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;
- 15 an institution's systemic risk assessed pursuant to subsection (1) sentence 1 number 2.

(3) ¹BaFin may subject an institution to supervisory stress tests or commission the Deutsche Bundesbank to carry out such stress tests. ²To this end, BaFin or the Deutsche Bundesbank may

- 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 BaFin and the Deutsche Bundesbank, and
- 2 determine the impact of shocks on the institution on the basis of supervisory stress testing methods using the available data.

(4) ¹In consultation with the Deutsche Bundesbank, BaFin 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. ²The reviews and evaluations shall be updated at least annually.

Section 7

Cooperation with the Deutsche Bundesbank

(1) ¹BaFin and the Deutsche Bundesbank will cooperate as stipulated in this Act. ²Without prejudice to further legal provisions, this cooperation encompasses the ongoing supervision of institutions by the Deutsche Bundesbank. ³Ongoing supervision notably entails evaluating the documentation submitted by institutions, audit reports pursuant to section 26 and annual financial statements as well as performing and evaluating on-site inspections with a view to assessing institutions' capital adequacy and risk management procedures, as well as appraising inspection findings. ⁴As a rule, the Deutsche Bundesbank's ongoing supervision is performed by its Regional Offices (*Hauptverwaltungen*).

(2) ¹In this context, the Deutsche Bundesbank shall observe the guidelines issued by BaFin. ²BaFin's guidelines on ongoing supervision shall be issued in agreement with the Deutsche Bundesbank. ³If agreement cannot be reached within an appropriate period of time, the Federal Ministry of Finance will issue such guidelines in consultation with the Deutsche Bundesbank. ⁴BaFin is responsible for the regulatory measures that apply to institutions, in particular general decrees and administrative decisions, including ordering inspections pursuant to section 44 (1) sentence 2 and section 44b (2) sentence 1. ⁵As a rule, BaFin bases its regulatory measures on the Deutsche Bundesbank's inspection findings and appraisals.

(3) ¹BaFin and the Deutsche Bundesbank shall exchange observations and findings that are necessary for the performance of their respective functions. ²In this regard, the Deutsche Bundesbank shall also communicate to BaFin the data that it obtains by virtue of collecting statistics pursuant to section 18 of the Bundesbank Act (*Gesetz über die Deutsche Bundesbank*). ³It shall consult BaFin prior to ordering such collection of statistics; section 18 sentence 5 of the Bundesbank Act applies *mutatis mutandis*.

(4) ¹The cooperation pursuant to subsection (1) and the communication pursuant to subsection (3) include the transmission of personal data needed by the recipient for the performance of its functions. ²In order to perform their functions under this Act, BaFin and the Deutsche Bundesbank are permitted to access the data stored in each other's databases via automated means. ³Every tenth time that BaFin retrieves personal data from the Deutsche Bundesbank's database, the Deutsche Bundesbank shall log the time, the details identifying the data records retrieved as well as the identity of the retriever. ⁴The logged data shall be used solely for the purpose of safeguarding data protection or data security or for ensuring the proper functioning of the data processing system. ⁵They shall be deleted at the end of the calendar year following that in which the data are logged, unless they are needed for an ongoing monitoring procedure. ⁶Sentences 3 to 5 apply *mutatis mutandis* to data retrievals by the Deutsche Bundesbank from BaFin's database. ⁷This is otherwise without prejudice to the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*).

(5) ¹BaFin and the Deutsche Bundesbank may set up joint data files. ²Each party may alter, block or delete only those data that it itself has entered and is deemed to be the competent authority within the meaning of the Federal Data Protection Act only with regard to the data which it itself has entered. ³If either party has grounds to suspect that the data entered by the other party are incorrect, it shall notify the other party thereof without delay. ⁴The other party shall verify the accuracy of the data without delay and, if necessary, correct, block or delete the data without delay. ⁵When a joint data file is set up, it shall be determined which party is to take the technical and organisational measures pursuant to section 9 of the Federal Data Protection Act. ⁶The party designated pursuant to sentence 5 shall ensure that members of staff are granted access to personal data only to the extent necessary for performing their functions. ⁷Retrievals of personal data by the party which did not enter the data shall be logged in the manner described in subsection (4) sentences 3 to 5.

Section 7a
Cooperation with the European Commission

(1) BaFin will report to the European Commission

- 1 the expiry or withdrawal of authorisation pursuant to section 35 or pursuant to the provisions of the Act on Administrative Procedures (*Verwaltungsverfahrensgesetz*), stating the reasons that led to the withdrawal,
- 2 the granting of authorisation pursuant to section 32 (1) to the branch of an undertaking within the meaning of section 53 having its head office in a non-EEA state,
- 3 the number and nature of the cases in which the establishment of a branch in another EEA state has foundered because BaFin has not forwarded the information specified in section 24a (1) sentence 2 to the competent authorities of the host member state,
- 4 the number and nature of the cases in which measures have been taken pursuant to section 53b (4) sentence 3 and (5) sentence 1,
- 5 general difficulties which securities trading undertakings face in establishing branches, setting up subsidiaries, conducting banking business, providing financial services or in performing the activities specified in section 1 (3) sentence 1 numbers 2 to 8 in a non-EEA state, and
- 6 an application for authorisation submitted by the subsidiary of an undertaking established in a non-EEA state if the Commission has demanded that the receipt of such applications be reported to it.

(2) BaFin will inform the European Commission of

- 1 (repealed)
- 2 the principles which BaFin applies, in agreement with the other competent authorities in the EEA, regarding the monitoring of intra-group transactions and risk concentrations,
- 3 the approach chosen in cases described in section 53d (3), and
- 4 (repealed)
- 5 the procedure for preventing circumvention of the additional capital requirements that apply where the large exposure limit for overall business is exceeded.

(3) BaFin will transmit to the European Commission lists of financial holding companies or mixed financial holding companies for which BaFin exercises supervision on a consolidated basis.

Section 7b

Cooperation with the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority

(1) ¹BaFin will participate pursuant to

- 1 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331/12 of 15 December 2010),
- 2 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331/84 of 15 December 2010), and
- 3 this Act

in the activities of the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), as well as in the activities of the associated college of supervisors. ²It shall involve the Deutsche Bundesbank in this participation pursuant to Regulation (EU) No 1093/2010 and this Act. ³Upon request, BaFin will without delay provide EBA pursuant to Article 35 of Regulation (EU) No 1093/2010 and ESMA pursuant to Article 35 of Regulation (EU) No 1095/2010 with all the information necessary to carry out their duties. ⁴BaFin will apply the guidelines and recommendations of EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and of ESMA in applying this Act. ⁵Should BaFin deviate or intend to deviate from these guidelines and recommendations, it will explain its reasons for doing so to the relevant European supervisory authority.

(2) BaFin will report to EBA

- 1 the granting of an authorisation to a CRR credit institution pursuant to section 32 (1), the expiry or withdrawal of an authorisation granted to a CRR credit institution pursuant to section 35,
- 2 the information specified in section 7a (1) numbers 1 to 4,
- 3 information collected pursuant to Article 450 (1) letters (g) and (h) of Regulation (EU) No 575/2013 as last amended,
- 4 information gathered pursuant to Article 450 (1) letter (i) of Regulation (EU) No 575/2013 as last amended,
- 5 measures taken by BaFin pursuant to section 6 (3) and section 10 (3) based on BaFin's finding that a CRR institution, in particular owing to its business model or the geographical location of its exposures, is or might be exposed to similar risks or poses similar risks to the financial system,
- 6 the methodology of the review and evaluation systems for risks to which a CRR institution is or might be exposed and of the risks that a CRR institution poses to the

financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 as last amended, and the methodology according to which measures are taken on the basis of this review,

- 7 the results of supervisory stress tests, insofar as these are necessitated over and above the stress tests performed pursuant to Article 32 of Regulation (EU) No 1093/2010 as last amended in order to ensure the sufficient review and oversight of the CRR institution,
- 8 orders issued by BaFin pursuant to section 10 (3) number 5 or section 10 (6), stating the reasons therefor,
- 9 all other measures taken by BaFin vis-à-vis a CRR institution if it breaches or is likely to breach the requirements of Regulation (EU) No 575/2013 or the requirements issued on the basis of Directive 2013/36/EU, stating the reasons therefor in each case, and
- 10 all legally effective fines imposed pursuant to section 56 (6) number 1, including all permanent prohibitions, especially those pursuant to section 36.

(3) BaFin will inform EBA of

- 1 (repealed)
- 2 the approach chosen in cases described in section 53d (3),
- 3 the procedure for preventing circumvention of the additional capital requirements that apply where the large exposure limit for overall business is exceeded,
- 4 decisions taken pursuant to section 2e,
- 5 the structure of groups of institutions, financial holding groups or mixed financial holding groups for which BaFin exercises supervision on a consolidated basis; this notably includes information on the group's legal and organisational structure as well as its arrangements for ensuring sound management,
- 6 the entities within the meaning of section 9 (1) sentence 4 to which BaFin may disclose information without breaching its professional secrecy obligation, and
- 7 the granting of approval to hold an additional mandate in a supervisory body pursuant to section 25c (2) sentence 4 and section 25d (3) sentence 5.

(3a) BaFin will transmit to EBA lists within the meaning of section 7a (3).

(4) BaFin will report to ESMA

- 1 the granting, expiry or withdrawal of an authorisation where an investment services undertaking (*Wertpapierdienstleistungsunternehmen*) within the meaning of section 2 (4) of the Securities Trading Act (*Wertpapierhandelsgesetz*) is affected, and
- 2 the information specified in section 7a (1) number 5.

(5) BaFin will inform EIOPA of decisions taken pursuant to section 2e.

Section 7c

Cooperation with the European Banking Committee

BaFin will report to EBA the granting of an authorisation pursuant to section 32 (1) to the branch of an undertaking within the meaning of section 53 having its head office in a non-EEA state.

Section 7d

Cooperation with the European Systemic Risk Board

¹BaFin will cooperate closely with the ESRB and take account of the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010. ²BaFin will report to the ESRB the countercyclical buffer ratio for each quarter pursuant to section 10d, the ratio's calculation basis in accordance with the statutory order pursuant to section 10 (1) sentence 1 number 5 and its application period, and will inform the ESRB of the fact that BaFin takes into account variables within the meaning of the statutory order pursuant to section 10 (1) sentence 1 number 5 when calculating the countercyclical buffer ratio and that the ratio would have been lower had these variables been not been taken into account.

Section 8

Cooperation with other entities

(1) (Repealed)

(2) If tax evasion proceedings are initiated against proprietors or senior managers of institutions or against holders of significant holdings in institutions or their legal or statutory representatives or general partners or against persons who actually manage the business of a financial holding company or a mixed financial holding company, or if such proceedings are averted by the submission of a corrective declaration amending a previously false submission (*Selbstanzeige*) pursuant to section 371 of the German Tax Code (*Abgabenordnung*), section 30 of the Tax Code shall not bar notifying BaFin of the proceedings and the underlying information; the same applies if the proceedings are initiated against persons who committed the offence whilst in the employ of an institution or a holder of a significant holding in an institution.

(3) ¹BaFin and the Deutsche Bundesbank – insofar as it is acting under this Act – will cooperate with the competent EEA authorities and with EBA and ESMA in the supervision of institutions which conduct banking business or provide financial services in another EEA state as well as in the supervision of groups of institutions, financial holding groups or mixed financial holding groups within the meaning of section 10a (1) to (5). ²For the assessment pursuant to section 2c (1a) and (1b), BaFin will cooperate with the competent EEA authorities if the party required to report is

- 1 a CRR institution, a primary insurance or reinsurance undertaking or a management company within the meaning of Article 2 (1) letter (b) of Directive 2009/65/EC (UCITS management company) which is authorised in a different member state or a different sector than the one in which the acquisition is intended;
- 2 a parent undertaking of a CRR institution, primary insurance or reinsurance undertaking or UCITS management company which is authorised in a different member state or a different sector than the one in which the acquisition is intended, or
- 3 a natural or legal person that controls a CRR institution, primary insurance or reinsurance undertaking or a UCITS management company which is authorised in a different member state or a different sector than the one in which the acquisition is intended.

³Subject to section 4b (1) in conjunction with section 15 (1) of the Federal Data Protection Act, they will exchange with them all relevant and fundamental information required for the exercise of supervision. ⁴Fundamental information may also be forwarded without a corresponding request from the competent agency. ⁵In this respect, fundamental information shall be deemed to comprise all information which may affect the assessment of an institution's financial situation in the EEA state in question. ⁶This shall notably include

- 1 disclosure of the group's legal and organisational structure as well as the arrangements for ensuring sound management of the group, including all the group's supervised undertakings, non-supervised undertakings, non-supervised subsidiaries and significant branches, and identification of the relevant competent authorities,
- 2 procedures for collecting and reviewing information from group institutions,
- 3 any adverse developments at institutions or at other group entities which could seriously impair the institutions, and
- 4 any severe or exceptional supervisory measures which BaFin has taken under this Act or under the statutory orders issued with regard to this Act's enforcement.

⁷BaFin will transmit to the competent authority in the host member state

1. all information necessary for assessing the trustworthiness and professional qualifications of the persons named in section 1 (2) sentence 1;
2. all information necessary to assess the trustworthiness of the holders of a significant holding in undertakings in the same group having their head office in Germany which is required for the granting of an authorisation to and the ongoing supervision of an undertaking within the meaning of section 33b sentence 1 that intends to conduct banking business pursuant to section 1 (1) sentence 2 numbers 1, 2, 4 and 10 or provide financial services pursuant to section 1 (1a) sentence 2 numbers 1 to 4 in the host member state;
3. without delay information and findings obtained in monitoring the institution's liquidity that is necessary for supervising the branch in the light of depositor and investor protection or the financial stability of the host member state, and

4. information on liquidity difficulties that are occurring or are highly likely, and details on the preparation and implementation of a recovery plan and on all prudential measures taken in this context.

⁸Information pursuant to sentence 6 numbers 3 and 4 shall also be communicated to the competent authority in the host member state in which a CRR credit institution has branches that are classified as significant. ⁹If a competent authority in another EEA state fails to transmit necessary information, BaFin may request assistance from EBA pursuant to Article 19 of Regulation (EU) No 1093/2010. ¹⁰BaFin may also request assistance from EBA or ESMA pursuant to Article 19 of Regulation (EU) No 1093/2010 and Regulation (EU) 1095/2010 if a request for cooperation, in particular for the exchange of information, has been refused by a competent authority or has not been acted upon within a reasonable time.

(3a) ¹The competent authority within the meaning of subsection (3) sentence 1 may ask for BaFin's cooperation in a monitoring operation, an inspection or an investigation. ²In the case of requests within the meaning of sentence 1, BaFin will make use of all the powers vested in it according to law with a view to monitoring compliance with this Act and corresponding provisions of these states insofar as this is appropriate and necessary to meet the requests. ³BaFin may refuse to perform an investigation, transmit information or allow staff of these foreign authorities to participate in such inspections if

- 1 this might impair the sovereignty, security or public order of the Federal Republic of Germany, or
- 2 judicial proceedings have already been initiated or an unappealable decision has already been rendered with respect to the same matter against the same persons.

⁴If BaFin fails to comply with such a request or makes use of its right pursuant to sentence 1, it will notify the requesting authority without delay, explaining the reasons therefor; in the case of a refusal pursuant to sentence 3 number 2, it shall transmit precise information about the judicial proceedings or unappealable decision.

(4) ¹In cases where BaFin is responsible for supervising EU parent institutions or institutions which are controlled by an EU parent financial holding company or a EU parent mixed financial holding company, it shall, upon request, transmit all relevant information to the competent authorities in the other EEA states responsible for supervising subsidiaries of these institutions. ²Relevant information in this context means all information that may materially influence the assessment of an institution's financial soundness in another EEA state. ³The scope of this notification requirement depends, in particular, on the subsidiary's systemic importance for the state in question.

(5) Notifications from the competent authorities of another state may be used only for the following purposes:

- 1 to verify an institution's authorisation to conduct business,
- 2 to monitor the institutions' activities on an individual or a consolidated basis,

- 3 for orders issued by BaFin and for the prosecution and punishment of breaches of administrative regulations by BaFin,
- 4 in the context of administrative proceedings regarding legal remedies against a decision by BaFin, or
- 5 in the context of proceedings before administrative courts, insolvency courts, public prosecutors or courts having jurisdiction in criminal cases or administrative fine cases.

(6) ¹Before making a decision on the following matters, BaFin will routinely consult the competent EEA authorities to the extent that the decision is of relevance for their supervisory activities:

- 1 changes in the structure of the holders, organisation or management of group institutions which require BaFin's consent,
- 2 severe or exceptional banking supervisory measures. In such cases, at least the authority responsible for supervision on a consolidated basis shall always be consulted, unless BaFin is the competent supervisor in this respect.

²BaFin may waive prior consultation of the competent authorities in the event of imminent danger. ³The same applies if prior consultation might compromise the measure's effectiveness; in such cases, BaFin will inform the competent authorities without delay after it has adopted or implemented the measure.

(7) ¹Where BaFin is responsible for supervising a group of institutions, a financial holding group or a mixed financial holding group on a consolidated basis and an emergency situation arises, particularly adverse developments on the financial markets, that poses a threat to the market liquidity and stability of the financial system of an EEA state in which one of the group entities has its head office or a branch has been classified as significant, BaFin shall without delay inform the Federal Ministry of Finance, EBA, the ESRB, the Deutsche Bundesbank and the central governments of the other member states, insofar as they are affected, and communicate to them all essential information to enable them to perform their functions. ²If BaFin becomes aware of an emergency situation within the meaning of sentence 1 in any other cases, it shall without delay inform the competent authorities responsible for supervision on a consolidated basis of the affected groups of institutions, financial holding groups or mixed financial holding groups, as well as EBA. ³This is without prejudice to section 9.

(8) BaFin will notify the competent authorities of the host member state of any measures which it will take to end an institution's breaches of the host member state's legal provisions of which BaFin has been informed by the competent authorities of the host member state.

(9) ¹If BaFin has sufficient indications that the provisions of this Act, Regulation (EU) No 575/2013 or corresponding provisions of the EEA states have been breached, it will inform the authority responsible for cooperation in the supervision of institutions within whose jurisdiction the breach has occurred. ²If BaFin receives a corresponding notification from

competent authorities of other states, it will inform these authorities of the outcome of any inquiries which it initiates in this regard.

Section 8a

Special functions with regard to supervision on a consolidated basis

(1) Where BaFin is responsible for the consolidated supervision of a group of institutions, a financial holding group or a mixed financial holding group within the meaning of section 10a which is headed by an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company, it will be responsible not only for the functions ensuing from this Act, but also for the following functions:

- 1 coordinating the collection and dissemination of relevant and essential information pursuant to section 8 (3) in the context of ongoing supervision as well as in emergency situations; this includes the collection and disclosure of information about the legal and organisational structure as well as the collection and disclosure of information regarding the arrangements for ensuring sound management;
- 2 planning and coordinating supervisory activities in the context of ongoing supervision as well as in emergency situations, particularly in the event of adverse developments at institutions or on the financial markets; BaFin and the Deutsche Bundesbank – insofar as it is acting under this Act – will cooperate as appropriate with the respective competent authorities of the other EEA states; in the context of ongoing supervision, such cooperation encompasses, in particular, the ongoing monitoring of institutions' risk management, cross-border inspections, measures in the event of organisational deficiencies pursuant to section 45b, disclosure by the institutions and the technical criteria concerning the organisation and treatment of risks laid down in Articles 76 to 87 and 92 to 96 of Directive 2013/36/EU; in emergency situations, particularly in the event of adverse developments at institutions or on the financial markets, cooperation will include the ordering of measures pursuant to sections 45 to 46b, the preparation of joint assessments, the implementation of contingency plans and communication to the public;
- 3 transmitting lists within the meaning of section 7a (3) to the respective competent authorities of the other EEA states.

²If the competent authorities of the other EEA states do not cooperate with BaFin to the extent necessary for it to perform its tasks pursuant to sentence 1, BaFin may request assistance from EBA pursuant to Article 19 of Regulation (EU) No 1093/2010.

(2) ¹BaFin and the competent EEA authorities may lay down detailed provisions in cooperation agreements for supervising groups of institutions, financial holding groups or mixed financial holding groups within the meaning of section 10a. ²These agreements may assign additional tasks to the relevant competent authority responsible for supervision on a consolidated basis and specify procedures for decision-making and cooperation with other competent authorities.

(3) ¹Where BaFin is responsible for the consolidated supervision of a group of institutions, a financial holding group or a mixed financial holding group which is headed by an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company, it shall take a joint decision with the EEA authorities responsible for supervising the group entities as to, first, whether the capital adequacy of the group on a consolidated basis is commensurate with its financial situation and risk profile and, second, what additional capital requirements are necessary for each group entity and on a consolidated basis. ²The decision shall be set out in documents containing full reasons and shall duly consider the risk assessment of subsidiaries performed by the relevant competent authorities. ³BaFin will communicate the decision to the superordinated group entity. ⁴If not all of the EEA authorities responsible for supervising the group entities agree with BaFin's decision, BaFin will consult EBA either on its own initiative or at the request of any one of the other competent EEA authorities. ⁵EBA's opinion shall be taken into due account in the subsequent deliberations; the decision shall justify any substantial deviations from the opinion.

(4) ¹If a joint decision is not reached within four months after a risk assessment of the group has been submitted to the competent authorities, BaFin will decide unilaterally whether the capital adequacy of the group of institutions, financial holding group or mixed financial holding group on a consolidated basis and the capital adequacy of the group entities that it supervises on either an individual or a sub-consolidated basis are commensurate with the financial situation and risk profile or whether additional capital requirements are necessary, and will communicate the decision to the superordinated group entity. ²BaFin will duly consider the risk assessment of subsidiaries performed by the relevant competent authorities. ³If, before the four-month period specified in sentence 1 expires, BaFin or a competent authority in another EEA state requests assistance from EBA pursuant to Article 19 of Regulation (EU) No 1093/2010, BaFin will defer its decision pursuant to sentence 1 and await any decision that EBA may make pursuant to Article 19 (3) of Regulation (EU) No 1093/2010, and will then take its decision in conformity with the decision of EBA. ⁴No requests to EBA for assistance shall be permissible after the four-month period has expired or after a joint decision has been reached. ⁵BaFin will communicate to the relevant competent authority its view regarding the capital adequacy of, and any need for additional capital requirements for, those group entities that it does not supervise on an individual or a sub-consolidated basis. ⁶If BaFin receives from another competent authority a decision containing well documented reasons which duly considers the risk assessments performed and the views expressed by the other competent authorities within the four-month period, it will transmit this document to all the relevant competent authorities and to the superordinated group entity.

(5) ¹Decisions pursuant to subsections (3) and (4) shall generally be updated annually and, in exceptional cases, more frequently if an authority responsible for supervising a group entity requests BaFin to do so in a document containing full reasons. ²In this case, the update may be agreed exclusively between BaFin and the competent authority that has submitted the application.

(6) ¹Where BaFin is responsible within the meaning of subsection (3) sentence 1 for supervising a group of institutions, a financial holding group or a mixed financial holding group, it shall seek to reach a joint decision within the meaning of subsection (3) on measures it intends to take within the scope of liquidity supervision and on institution-specific liquidity requirements; subsection (3) sentences 2 and 3 applies *mutatis mutandis*. ²If a joint decision is not reached within one month after the assessment of the group's liquidity risk profile has been submitted to the competent authorities, BaFin will decide on the measures unilaterally and will communicate the decision to the superordinated group entity. ³If, before the one-month period specified in sentence 1 expires, BaFin or a competent authority in another EEA state requests assistance from EBA pursuant to Article 19 of Regulation (EU) No 1093/2010, BaFin will defer its decision pursuant to sentence 1 and await any decision that EBA may take pursuant to Article 19 (3) of Regulation (EU) No 1093/2010, and will then take its decision in conformity with the decision of EBA. ⁴No requests to EBA for assistance shall be permissible after the one-month period has expired or after a joint decision has been reached. ⁵Subsection (5) applies *mutatis mutandis*.

Section 8b (Repealed)

Section 8c

Delegation of responsibility for supervising groups of institutions, financial holding groups, mixed financial holding groups and institutions belonging to a group

(1) ¹BaFin may opt out of supervising a group of institutions, a financial holding group or a mixed financial holding group within the meaning of section 10a and revocably delegate responsibility for supervision on a consolidated basis to another competent authority within the EEA if supervision by BaFin would be inappropriate in view of the institutions concerned and the importance of their business activities in the other state, and if,

- 1 in the case of groups of institutions, the superordinated group entity is a subsidiary of a CRR institution having its head office in the other EEA state and is included there in supervision on a consolidated basis pursuant to Regulation (EU) No 575/2013, or
- 2 in the case of financial holding groups or mixed financial holding groups, these groups are supervised on a consolidated basis pursuant to Regulation (EU) No 575/2013 by the competent authorities of the other EEA state.

²In these cases, BaFin will revocably exempt the superordinated entity from the provisions of this Act relating to supervision on a consolidated basis. ³The superordinated entity shall be consulted prior to such exemption and delegation of responsibility to another agency. ⁴The European Commission and EBA shall be informed of the existence and contents of any agreements of this kind.

(2) ¹Where BaFin assumes responsibility for the consolidated supervision of a group of institutions, a financial holding group or a mixed financial holding group by virtue of an agreement with a competent authority within the EEA, it may designate a group institution

having its head office in Germany as the superordinated entity. ²Section 10a applies *mutatis mutandis*.

(3) ¹Pursuant to Article 28 of Regulation (EU) No 1093/2010, BaFin may revocably delegate responsibility for supervising an institution for the authorisation of which BaFin is responsible to another competent authority within the EEA if the institution is a subsidiary of an institution for which this competent authority is responsible for authorisation and supervision pursuant to Regulation (EU) No 575/2013. ²This institution shall be consulted before such delegation of responsibility. ⁴EBA shall be informed of the existence and contents of any agreements of this kind.

Section 8d (Repealed)

Section 8e Colleges of supervisors

(1) ¹BaFin will establish colleges of supervisors in cases where it is responsible for the consolidated supervision of a group of institutions, a financial holding group or a mixed financial holding group. ²The aim of establishing colleges of supervisors is to facilitate the exercise of the functions referred to in section 8 (7), section 8a and the provisions of the statutory order pursuant to section 10 (1) sentence 1 number 3 and to ensure adequate cooperation with the competent authorities in the EEA, including EBA, and with the competent authorities in non-EEA states. ³The purposes of the college of supervisors include

- 1 exchanging information,
- 2 agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate,
- 3 determining supervisory examination programmes based on the risk assessment of a group of institutions, a financial holding group or a mixed financial holding group,
- 4 removing unnecessary duplication of supervisory requirements,
- 5 consistently applying the existing prudential requirements across all entities within a group without prejudice to existing discretionary options and discretions, and
- 6 planning and coordination of supervisory activities in preparation for and during emergency situations, taking into account the work of other forums active in this area.

(2) ¹BaFin will set out in a document the establishment and functioning of each college of supervisors in consultation with the competent authorities; section 8a (2) applies *mutatis mutandis*. ²BaFin chairs the meetings of the college of supervisors and decides which competent authorities, besides BaFin and the Deutsche Bundesbank, will take part in a meeting or activities of the college of supervisors. ³Besides the authorities responsible for supervising group subsidiaries and the competent authorities of the host member state containing a significant branch, BaFin may also decide to allow competent authorities of non-

EEA states to participate in a college of supervisors provided such countries have in place professional secrecy requirements which, in the opinion of all authorities involved in the college, are equivalent to the provisions of Title VII Chapter I Section II of Directive 2013/36/EU.

(3) BaFin will keep all members of the college of supervisors fully informed, in advance, of the organisation of the meetings, the main issues to be discussed and the activities to be considered and will also keep them fully informed, in a timely manner, of the actions taken in the meetings and the measures carried out.

(4) In its decisions to be reached pursuant to subsection (2), BaFin will take due account of the importance for the competent authorities of the supervisory activities to be planned or coordinated, especially the potential impact on the stability of the financial system in the countries concerned.

(5) BaFin will inform EBA about the activities of the college of supervisors, especially in emergency situations, and will transmit to EBA all information of particular relevance for the purposes of converging supervisory practices at the European level. ²EBA staff may participate in the activities of colleges of supervisors pursuant to Article 21 of Regulation (EU) No 1093/2010, including inspections pursuant to section 44 (1) and (2) where these are performed by BaFin jointly with at least one other competent authority.

(6) ¹Where BaFin is not responsible for the consolidated supervision of a group of institutions, financial holding group or mixed financial holding group but supervises CRR credit institutions with significant branches in other EEA countries, it will establish a college of supervisors in order to facilitate cooperation with the competent authorities of the host member state pursuant to section 8 (3) as well as in emergency situations. ²Subsection (2) sentences 1 and 2 and subsections (3) and (4) apply *mutatis mutandis*.

(7) BaFin and the Deutsche Bundesbank will cooperate in performing the functions pursuant to subsections (1) to (6).

Section 8f

Cooperation in the supervision of significant branches

(1) ¹At the request of the competent authority, BaFin will designate the branch of a CRR institution in a host member state or an EEA state as significant, with particular regard to whether the branch satisfies the requirements set forth in section 53b (8) sentence 4; in this case, BaFin will transmit to the competent authority

- 1 information pursuant to section 8 (3) sentence 6 numbers 3 and 4 and section 11 (3),
- 2 the results of the risk assessments of the CRR institution, and
- 3 decisions regarding the first-time or further use of internal approaches and regarding measures pursuant to section 6 (3), insofar as these affect the significant branch.

²BaFin will plan and coordinate the supervisory activities within the meaning of section 8a (1) number 2 in cooperation with the competent authorities within the meaning of sentence 1.

(2) ¹BaFin will consult the competent authorities within the meaning of subsection (1) sentence 1 on decisions regarding the institution's liquidity recovery plan where this is relevant for liquidity risks in connection with the currency of the host member state or of the EEA state. ²If BaFin neglects to do this or upholds its own view, the competent authority may request assistance from EBA pursuant to Article 19 of Regulation (EU) No 1093/2010.

(3) If BaFin receives information and findings from the competent authority within the meaning of subsection (1) sentence 1, it shall duly consider this when drafting the inspection plan; in doing so, it shall take account of the potential impact on the stability of the financial system in the host member state or the EEA state.

Section 9

Professional secrecy requirements

(1) ¹Persons employed by BaFin and persons commissioned pursuant to section 4 (3) of the Act Establishing the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz*), special commissioners appointed pursuant to section 45c, liquidators appointed pursuant to section 37 sentence 2 and section 38 (2) sentences 2 and 4, and persons employed by the Deutsche Bundesbank, insofar as they are acting to implement this Act, shall not disclose or use without authorisation information they receive in the course of their activities and which should be kept secret in the interests of the institution or a third party (especially business and trade secrets), including after they have left such employment or their activities have ended. ²This is without prejudice to the provisions of the Federal Data Protection Act which must be complied with by the supervised institutions and entities. ³This applies also to other persons who obtain the information referred to in sentence 1 through official reporting channels. ⁴Disclosure or use shall be deemed not to be unauthorised within the meaning of sentence 1 where, in particular, information is communicated to

- 1 public prosecutors' offices or courts having jurisdiction in criminal cases and administrative fine cases,
- 2 authorities which are entrusted by law or public mandate with the oversight of institutions, investment management companies, externally managed investment companies, EU management companies or foreign AIF management companies, financial undertakings, insurance undertakings, the financial markets or the payment system, or which are tasked with the prevention of money laundering, and persons commissioned by such authorities,
- 3 authorities dealing with an institution's liquidation or insolvency proceedings over its assets,
- 4 persons entrusted with the statutory auditing of the accounts of institutions or financial undertakings, and authorities which supervise such persons,

- 5 a deposit guarantee scheme or an investor compensation scheme,
6 stock exchanges or financial futures exchanges,
7 central banks,
8 operators of systems referred to in section 1 (16),
9 the competent authorities in other EEA states or in non-EEA states with which BaFin
cooperates within colleges of supervisors pursuant to section 8e,
10 the European Central Bank (ECB), the European System of Central Banks (ESCB),
EBA, EIOPA, ESMA, the Joint Committee of the European Supervisory Authorities,
the ESRB or the European Commission,
11 authorities responsible for overseeing payment and settlement systems,
12 parliamentary enquiry committees pursuant to section 1 of the Enquiry Committee Act
(*Untersuchungsausschussgesetz*) on the basis of a decision on a request pursuant to
section 18 (2) of the Enquiry Committee Act,
13 the Federal Constitutional Court (*Bundesverfassungsgericht*),
14 the Federal Court of Auditors (*Bundesrechnungshof*) insofar as its investigative
mandate relates to the decisions and other activities of BaFin under this Act or
Regulation (EU) No 575/2013,
15 administrative courts in administrative law disputes in which BaFin is a defendant,
except for cases brought under the Freedom of Information Act
(*Informationsfreiheitsgesetz*),
16 the Bank for International Settlements (BIS), including the multilateral bodies it hosts,
in particular the Financial Stability Board (FSB),
17 the International Monetary Fund (IMF), insofar as this is as required to enable the
Fund to fulfil its statutory mandate or special tasks with which its members have
entrusted it,
18 the Financial Stability Committee (*Ausschuss für Finanzstabilität*) or the ESRB, or
19 the Financial Market Stabilisation Agency (*Bundesanstalt für
Finanzmarktstabilisierung – FMSA*), the Financial Market Stabilisation Fund Panel
(*Gremium zum Finanzmarktstabilisierungsfonds*)n within the meaning of section 10a
(1) of the Financial Market Stabilisation Fund Act or the Steering Committee
(*Lenkungsausschuss*) within the meaning of section 4 (1) sentence 2 of the Financial
Market Stabilisation Fund Act,

insofar as these authorities require the information to perform their functions. ⁵The professional secrecy requirement pursuant to sentence 1 applies *mutatis mutandis* to persons employed by the authorities referred to in sentence 4 numbers 1 to 11 and 13 to 19 and to persons commissioned by these authorities and to members of the committees referred to in sentence 4 numbers 12 and 19. ⁶Where an authority referred to in sentence 4 numbers 1 to 11 and 16 to 18 is located in another country, the information may be disclosed

only if the persons employed or appointed by this authority are subject to a professional secrecy requirement equivalent to the requirement in sentence 1. ⁷The foreign authority shall be informed that it may use information solely for the purpose for which it has been transmitted to it. ⁸Information that originates in another country shall not be disclosed without the express agreement of the competent authorities which have disclosed it and solely for the purposes for which those authorities gave their consent.

(2) Unauthorised disclosure or use of information within the meaning of subsection (1) sentence 1 shall not obtain where the outcome of stress tests carried out in accordance with Article 100 of Directive 2013/36/EU or Article 32 of Regulation (EU) No 1093/2010 as last amended is published or transmitted to EBA for the publication of EU-wide stress test results.

(3) Where the transmission of information pursuant to subsection (1) relates to personal data, the Federal Data Protection Act as last amended applies.

(4) In an emergency situation BaFin may also disclose information to the competent authorities in other countries for supervisory purposes.

(5) ¹Sections 93, 97 and 105 (1), section 111 (5) in conjunction with section 105 (1) and section 116 (1) of the Tax Code do not apply to the persons referred to in subsection (1) insofar as they are acting to implement this Act. ²This does not apply if the fiscal authorities require the information for instituting tax evasion proceedings and associated tax assessment proceedings in the prosecution of which there is a pressing public interest, or if the person required to provide information or the persons acting on his/her behalf have intentionally supplied incorrect information. ³Sentence 2 does not apply if the information involved was communicated to the persons referred to in subsection (1) sentence 1 or 3 by the competent supervisory authority of another country or by persons appointed by that authority.

Part II

Provisions for institutions, groups of institutions, financial holding groups, financial conglomerates, mixed financial holding companies and mixed-activity holding companies

Division 1 OWN FUNDS AND LIQUIDITY

Section 10

Supplementary own funds requirements for institutions, groups of institutions, financial holding groups and mixed financial holding groups; authority to issue orders

(1) ¹In order for institutions, groups of institutions, financial holding groups and mixed financial holding groups to meet their obligations towards their creditors, and in particular to safeguard the assets entrusted to them, the Federal Ministry of Finance, in consultation with the Deutsche Bundesbank, shall be authorised to issue, by way of a statutory order that does not require the consent of the upper house of parliament (Bundesrat) and as a complement to Regulation (EU) No 575/2013, more detailed provisions on the own funds adequacy (solvency) of institutions, groups of institutions, financial holding groups and mixed financial holding groups, in particular

- 1 supplementary provisions concerning the requirements for permission to use internal approaches,
- 2 provisions concerning the ongoing monitoring of internal approaches by BaFin, in particular concerning measures to be taken in the event of non-compliance with requirements for internal approaches and concerning the withdrawal of permission to use internal approaches,
- 3 more detailed procedural provisions concerning the permission to use, ongoing monitoring of and withdrawal of permission to use internal approaches,
- 4 more detailed provisions concerning the review of requirements for internal approaches by BaFin, in particular concerning suitability and follow-up examinations,
- 5 more detailed provisions concerning
 - (a) the setting and determination of the countercyclical buffer rate pursuant to section 10d, in particular concerning the setting of a buffer guide, concerning the procedure for recognising countercyclical buffers of EEA and non-EEA states, concerning the publication requirements of BaFin and concerning the calculation of the institution-specific buffer rate,
 - (b) the setting and determination of the systemic risk buffer rate pursuant to section 10e, in particular concerning the inclusion of systemic or macroprudential risk, concerning the determination of exposures to be taken into account and their

geographical location and concerning the procedure for recognising the systemic risk buffers of EEA and non-EEA states,

- (c) the setting and determination of the buffer rate for global systemically important institutions pursuant to section 10f, in particular concerning the determination of global systemically important institutions and their mapping to size categories, concerning the upgrading or downgrading between size categories as well as concerning the publication of the indicators underlying the quantitative analysis,
 - (d) the setting and determination of the buffer rate for other systemically important institutions pursuant to section 10g, in particular concerning the determination of other systemically important institutions and concerning the setting of the buffer rate on an individual, consolidated or sub-consolidated basis,
 - (e) the amount of and more detailed information on calculating the maximum distributable amount for the combined buffer requirement pursuant to section 10i,
- 6 more detailed provisions concerning the setting of the percentages and factors pursuant to Article 465 (2), Article 467 (3), Article 468 (3), Article 478 (3), Article 479 (4), Article 480 (3), Article 481 (5) and Article 486 (6) of Regulation (EU) No 575/2013,
 - 7 more detailed provisions concerning the application and notification procedures envisaged in Regulation (EU) No 575/2013 and
 - 8 requirements for measuring the mortgage lending value of immovable property pursuant to Article 4 (1) number 74 of Regulation (EU) No 575/2013 as last amended,
 - 9 more detailed provisions on supervisory benchmarking in the application of internal approaches for the purpose of determining own funds requirements, in particular more detailed provisions concerning the procedure and the nature, scale and frequency of the information to be presented by the institutions as well as more detailed provisions concerning the requirements to be set by BaFin regarding the composition of special benchmarking portfolios, and
 - 10 the requirement for CRR institutions to publicly disclose the information set out in section 26a (1) sentence 2 on a consolidated basis as well as the return on assets pursuant to section 26a (1) sentences 3 and 4, including the subject matter of the public disclosure requirement as well as the medium, disclosure channel, frequency of disclosure and the scope of the data to be communicated on a confidential basis to the European Commission pursuant to section 26a (1) sentence 5.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ³The central associations representing the institutions shall be consulted before the statutory order is issued.

(2) ¹Institutions may, for the purpose of Regulation (EU) No 575/2013 and of the statutory order to be issued pursuant to subsection (1) sentence 1, collect and use personal data on their customers, on persons with whom they enter into contractual negotiations on

transactions which give rise to counterparty and credit risk and on persons responsible for the performance of a counterparty and credit risk, provided that these data

- 1 are verifiably material to determining and recognising counterparty and credit risk using a scientifically recognised mathematical-statistical method,
- 2 are necessary for the setting-up and operation, including the development and improvement, of internal rating systems for estimating risk parameters relating to the credit institution's or investment firm's counterparty and credit risk and
- 3 do not pertain to information about nationality or to data pursuant to section 3 (9) of the Federal Data Protection Act.

²Business and trade secrets shall be deemed equivalent to personal data. ³Notwithstanding sentence 1 number 1, institutions may, for the purpose of developing and improving rating systems, also collect and use data that may be material to determining and recognising counterparty and credit risk based on plausible economic rationale. ⁴In particular, data that belong to the following categories or have been extracted from data in the following categories may be material to determining and recognising counterparty and credit risk:

- 1 income, financial and employment circumstances as well as other economic circumstances, in particular nature, scope and profitability of the business activity of the person concerned,
- 2 the past payment behaviour and contract fulfilment of the person concerned,
- 3 enforceable claims and judicial enforcement proceedings and measures against the person concerned,
- 4 insolvency proceedings relating to the assets of the person concerned where these have been initiated or an application has been made to initiate such proceedings.

⁵These data may be collected from

- 1 the person concerned,
- 2 institutions that belong to the same group of institutions,
- 3 external credit assessment institutions (ECAIs) and credit information agencies, and
- 4 publicly accessible sources.

⁶Institutions may also transmit personal data pursuant to sentence 1 collected from service providers tasked with the setting-up and operation, including the development and improvement, of rating systems to other institutions within the same group of institutions and in a pseudo-anonymised form, provided that this is necessary for the setting-up and operation, including the development and improvement, of internal rating systems for estimating risk parameters relating to counterparty and credit risk.

(3) ¹BaFin may issue 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 Article 1 of Regulation (EU) No 575/2013 which go beyond the own funds requirements pursuant to Regulation (EU) No 575/2013 and the statutory order pursuant to subsection 1. ²BaFin shall order such additional own funds requirements at least in the following cases and for the following purposes:

- 1 where risks or risk elements are not covered by the own funds requirements pursuant to Regulation (EU) No 575/2013 and the statutory order pursuant to subsection (1), or the requirements pursuant to Article 393 of Regulation (EU) No 575/2013 on the identification and management of large exposures are not complied with,
- 2 where the internal capital adequacy of the institution, group of institutions, financial holding group or mixed financial holding group is not assured,
- 3 where the review pursuant to section 6b (2) sentence 2 number 2 makes it likely that the valuation adjustments taken by the institution are not sufficient to assure own funds adequacy,
- 4 where it is likely that risk is being understated despite compliance with the requirements under this Act, under Regulation (EU) No 575/2013 and under the statutory orders pursuant to subsection (1) and to section 13 (1),
- 5 in order to safeguard the creation of an additional own funds buffer for adverse economic periods,
- 6 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,
- 7 where an institution has implicitly supported a securitisation position on more than one occasion; to this end, BaFin may order that the significant risk transfer for all securitisation positions for which the institution is the originator shall not be recognised, or be recognised only partially, in the calculation of the own funds required for the purpose of taking into account expected further occasions upon which it provides implicit support,
- 8 where the own funds requirements resulting from the outcome of the stress tests for the correlation trading portfolio pursuant to Article 377 (5) sentence 3, clause 2 of Regulation (EU) No 575/2013 materially exceed the own funds requirements for the correlation trading portfolio pursuant to Article 377 of Regulation (EU) No 575/2013,
- 9 other measures are unlikely to sufficiently improve the institution's internal procedures, processes and methods within a suitable timeframe,
- 10 where the institution does not have in place a proper business organisation within the meaning of section 25a (1).

³Insofar as institutions which BaFin believes to have similar risk profiles might be exposed to similar risks or pose similar risks to the financial system, BaFin may issue uniform orders for these institutions pursuant to sentence 1. ⁴In the case of institutions for which colleges of

supervisors have been set up pursuant to section 8e, BaFin will take account of the respective college's assessments when deciding on an order pursuant to sentence 1.

(4) ¹BaFin may also require individual institutions, groups of institutions, financial holding groups and mixed financial holding groups or individual types or groups of institutions, groups of institutions, financial holding groups and mixed financial holding groups to maintain own funds in excess of the own funds requirements pursuant to Regulation (EU) No 575/2013 and to the statutory order pursuant to subsection (1) for a limited period if such capital reinforcement is necessary

- 1 in order to counteract the threat of a financial market dysfunction or a danger to financial market stability, and
- 2 in order to prevent substantial negative repercussions for other financial sector undertakings and for the general confidence of depositors and other market participants in a functioning financial system.

²A 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. ³In 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 subsection (1) and which take account of these special market circumstances. ⁴Additional 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. ⁵In 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. ⁶In 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. ⁷Insofar as the plan impinges upon the concerns of the Financial Market Stabilisation Fund within the meaning of section 1 of the Act on the Establishment of a Financial Market Stabilisation Fund, the plan will be assessed in agreement with the Steering Committee pursuant to section 4 (1) sentence 2 of the Act on the Establishment of a Financial Market Stabilisation Fund (Steering Committee). ⁸BaFin 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. ⁹In such cases, institutions shall also consider the option of applying for stabilisation measures pursuant to the Act on the Establishment of a Financial Market Stabilisation Fund if no alternative measures are available. ¹⁰If 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 pursuant to section 45c (2) number 7(a). ¹¹In 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. ¹²Any conflicting resolutions on profit distribution shall be void; no claims or entitlements may be derived from any conflicting contractual provisions.

(5) Sections 313, 314, 489, 490, 723 to 725, 727 and 728 of the Civil Code and sections 132 to 135 of the Commercial Code shall not be applicable if the purpose of a capital commitment is the lending of own funds within the meaning of Article 72 of Regulation (EU) No 575/2013.

(6) BaFin 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 to 101 of Regulation (EU) No 575/2013 as last amended.

(7) ¹BaFin may prescribe a filter for the own funds pursuant to Article 72 of Regulation (EU) No 575/2013 as last amended. ²If the filter is prescribed in order to take into account capital changes which have not yet been recognised in the balance sheet, this filter will become null and void upon the adoption of the next annual accounts drawn up for the end of a financial year. ³At the institution's request, BaFin shall cancel its filter insofar as the reasons for it no longer apply.

Section 10a

Determining the own funds adequacy of groups of institutions, financial holding groups and mixed financial holding groups; authority to issue orders

(1) ¹A group of institutions, financial holding group or mixed financial holding group (group) in each case comprises a superordinated undertaking and one or more subordinated undertakings. ²Superordinated undertakings are CRR institutions which pursuant to Article 11 of Regulation (EU) No 575/2013 are required to carry out consolidation as well as institutions which pursuant to section 1a in conjunction with Article 11 of Regulation (EU) No 575/2013 are required to carry out consolidation. ³Subordinated undertakings are undertakings which must be included in consolidation pursuant to Article 18 of Regulation (EU) No 575/2013 or are voluntarily included in consolidation; institutions which qualify as CRR institutions pursuant to section 1a are deemed to be institutions within the meaning of Article 18 of Regulation (EU) No 575/2013. ⁴If a credit institution which is not a CRR credit institution is a superordinated undertaking, entities which conduct banking business solely in the form of deposit business pursuant to section 1 (1) sentence 2 number 1 are also deemed to be subordinated undertakings. ⁵Notwithstanding sentence 2, BaFin may, at the request of the superordinated undertaking, designate another group institution as the superordinated undertaking; the group institution shall be consulted beforehand. ⁶If, in the case of cross-shareholdings, no institution within the group of institutions fulfils the conditions of sentence 2, BaFin shall designate the group's superordinated undertaking. ⁷In the case of a horizontal group within the meaning of Article 18 (3) of Regulation (EU) No 575/2013, the group institution established in Germany with the highest total assets is deemed to be the superordinated undertaking. ⁸If the superordinated undertaking is a financial services institution which solely provides financial services within the meaning of section 1 (1a) sentence 2 number 9 or 10, a group of institutions within the meaning of this provision is

deemed to exist only if at least one CRR institution established in Germany is subordinated to it as a subsidiary.

(2) ¹If a financial holding company within the meaning of Article 4 (1) number 20 of Regulation (EU) No 575/2013 or a mixed financial holding company within the meaning of Article 4 (1) number 21 of Regulation (EU) No 575/2013 has several subordinated institutions established in Germany, the institution with the highest total assets is deemed to be the superordinated undertaking; at the superordinated institution's request, BaFin will designate a different group institution established in Germany as the superordinated undertaking; the group institution shall be consulted beforehand ²At the request of a financial holding company or mixed financial holding established in Germany, and after having consulted the regulated entity which, pursuant to Article 11 (2) or Article 12 of Regulation (EU) No 575/2013 or sentence 1, is deemed to be the superordinated undertaking or was designated as such by BaFin, BaFin may designate the financial holding company or mixed financial holding company as the superordinated undertaking insofar as the latter has demonstrated that it has the structure and organisation needed to ensure compliance with the group-related obligations. ³After having consulted the regulated entity which, pursuant to Article 11 (2) or Article 12 of Regulation (EU) No 575/2013 or sentence 1, is deemed to be the superordinated undertaking or was designated as such by BaFin pursuant to sentence 1, BaFin may also designate a financial holding company or mixed financial holding company established in Germany as the superordinated undertaking without having been requested to do so insofar as this is necessary for prudential reasons, notably reasons pertaining to the organisation and structure of the financial holding company or mixed financial holding company. ⁴The financial holding company or mixed financial holding company designated as the superordinated undertaking pursuant to sentence 2 or sentence 3 shall perform all the group-related obligations of a superordinated undertaking. ⁵If the conditions for designation as the superordinated undertaking pursuant to sentence 2 or sentence 3 no longer exist, notably if the financial holding company or mixed financial holding company transfers its head office to another jurisdiction or is no longer in a position to ensure compliance with the group-related obligations, BaFin, after having consulted the financial holding company or mixed financial holding company, shall rescind its designation; section 35 (4) shall apply *mutatis mutandis*. ⁶BaFin shall have all the powers over a financial holding company or mixed financial holding company designated as the superordinated undertaking pursuant to sentence 2 or sentence 3 and its management bodies which it has over an institution as the superordinated undertaking and its management bodies. ⁷If, in the case of cross-shareholdings, no institution established in Germany fulfils the condition of itself not being subordinated to any other group institution, the institution with the highest total assets shall normally be deemed to be the superordinated undertaking; at the request of the superordinated undertaking BaFin will designate another group institution established in Germany as the superordinated undertaking; the group institution shall be consulted beforehand.

(3) ¹By way of derogation from subsection (1) sentences 1 to 3, a financial holding group or mixed financial holding group is deemed not to exist if the financial holding company within the meaning of Article 4 (1) number 30 or 31 of Regulation (EU) No 575/2013 or mixed

financial holding company within the meaning of Article 4 (1) number 32 or 33 of Regulation (EU) No 575/2013 is established in another EEA state, and

- 1 the financial holding company or mixed financial holding company has at least one CRR institution established in its country of incorporation subordinated to it as a subsidiary, or
- 2 the financial holding company or mixed financial holding company has at least one CRR institution established in Germany and no CRR institution established in its country of incorporation subordinated to it, and the total assets of the CRR institution established in Germany are not higher than the total assets of another CRR institution established in another EEA state that is subordinated to the financial holding company or mixed financial holding company as a subsidiary.

²If, in a financial holding group or mixed financial holding group, more than one financial holding company within the meaning of Article 4 (1) number 30 or 31 of Regulation (EU) No 575/2013 or mixed financial holding company within the meaning of Article 4 (1) number 32 or 33 of Regulation (EU) No 575/2013 incorporated both in Germany and in another EEA state are parent undertakings and if at least one CRR institution is established in each of these countries, a financial holding group or mixed financial holding group is deemed not to exist if the total assets of the CRR institution established in Germany is not higher than the total assets of another CRR institution established in another EEA state belonging to the financial holding group or mixed financial holding group as a subsidiary.

(4) ¹To calculate own funds adequacy pursuant to Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended on a consolidated basis and to limit large exposure risk pursuant to Articles 387 to 403 of Regulation (EU) No 575/2013, the superordinated undertakings shall aggregate the group's own funds and the relevant risk exposures. ²The accounting values of capital instruments pursuant to Article 26 (1) letter (a), Article 51 letter (a) and Article 62 letter (a) of Regulation (EU) No 575/2013 as last amended that are attributable to group entities shall be deducted from the own funds to be aggregated pursuant to sentence 1. ³In the case of participations mediated by non-group undertakings, such accounting values shall each be deducted in proportion to the arithmetical share of the capital. ⁴Where the accounting value of a participation is greater than the part to be aggregated as own funds pursuant to sentence 1 of the subordinated undertaking's Common Equity Tier 1 items pursuant to Article 26 (1) of Regulation (EU) No 575/2013 as last amended, the superordinated undertaking shall deduct the difference from the group's Common Equity Tier 1 capital pursuant to Article 50 of Regulation (EU) No 575/2013 as last amended. ⁵Counterparty and credit risk exposures arising from legal relationships between group undertakings shall be disregarded. ⁶In the case of subordinated undertakings which are not subsidiaries, the superordinated undertaking shall aggregate its own funds and the relevant risk exposures under Regulation (EU) No 575/2013 as last amended with the own funds and the relevant risk exposures of the subordinated undertakings, in each case in proportion to its capital share in the subordinated undertaking. ⁷In other respects sentences 2 to 5 shall apply *mutatis mutandis*, in each case also in conjunction with the statutory order pursuant to subsection (7).

(5) ¹If the superordinated undertaking of a group of institutions is obliged to prepare group accounts pursuant to the provisions of the Commercial Code or if, pursuant to Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC L 243/1 of 11 September 2002) as last amended or pursuant to section 315a (2) of the Commercial Code, it is obliged to apply the international accounting standards adopted pursuant to Articles 3 and 6 of Regulation (EC) No 1606/2002 when preparing the group accounts, it shall base the determination of the aggregated own funds as well as of the aggregated risk exposures pursuant to Articles 24 to 386 of Regulation (EU) No 575/2013 as last amended on the group accounts no later than five years after the respective obligation comes into being. ²If the superordinated undertaking of a group of institutions applies the aforementioned international accounting standards pursuant to section 315a (3) of the Commercial Code, sentences 1 and 2 shall apply *mutatis mutandis*; the coming into being of the obligation to apply the international accounting standards shall be replaced by the first-time application thereof. ³Subsection (4) shall not apply to the cases in sentences 1 to 3. ⁴In these cases the own funds and other relevant risk exposures of undertakings which are included in the group accounts and which are not group entities within the meaning of this provision shall be disregarded. ⁵Own funds and other relevant risk exposures of undertakings not included in the group accounts which are group entities within the meaning of this provision shall be additionally included, whereby the procedure pursuant to subsection (4) may be applied. ⁶Sentences 1 to 6 shall apply *mutatis mutandis* to a financial holding group or mixed financial holding group if the financial holding company or mixed financial holding company is obliged under the aforementioned provisions to prepare group accounts or prepares group accounts according to the aforementioned international accounting standards pursuant to section 315a (3) of the Commercial Code.

(6) ¹A group which, pursuant to subsection (5), must base the calculation of the aggregated own funds and the aggregated risk exposures on the group accounts may, subject to BaFin's permission, use the procedure pursuant to subsection (4) for these purposes if the use of the group accounts is unsuitable in a particular case. ²In this case, the group's superordinated undertaking shall apply the procedure pursuant to subsection (4) for at least three consecutive years.

(7) ¹The Federal Ministry of Finance, in consultation with the Deutsche Bundesbank, is authorised by way of a statutory order that does not require the consent of the Bundesrat to issue more detailed provisions on determining the own funds adequacy of groups, in particular with regard to

- 1 the use of data from the group accounts in determining the aggregated own funds adequacy when using the procedure pursuant to subsection (5),
- 2 the treatment of participations valued using the equity method when using the procedure pursuant to subsection (5).

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche

Bundesbank. ³The central associations of the institutions shall be consulted before the statutory order is issued.

(8) ¹The superordinated undertaking is responsible for ensuring that the group has adequate own funds. ²However, in meeting its obligations pursuant to sentence 1, it may exert influence on the group entities only insofar as this does not conflict with generally applicable company law.

(9) Groups are exempt from applying the requirements on a consolidated basis pursuant to Articles 11 to 23 of Regulation (EU) No 575/2013 if all the group institutions are not required to apply Articles 92 to 386 of Regulation (EU) No 575/2013 on an individual basis unless they were exempted pursuant to Article 7 of Regulation (EU) No 575/2013 from applying Articles 92 to 386 of Regulation (EU) No 575/2013 on an individual basis.

(10) In the case of sub-consolidation pursuant to Article 22 of Regulation (EU) No 575/2013, subsections (4) to (9) shall be applied *mutatis mutandis*.

**Section 10b
(Repealed)**

**Section 10c
Capital conservation buffer**

(1) ¹In addition to the Common Equity Tier 1 capital required, pursuant to section 10 (3), for compliance with the own funds requirement pursuant to Article 92 of Regulation (EU) No 575/2013 and higher own funds required to hedge risk and risk elements not covered by Article 1 of Regulation (EU) No 575/2013, an institution shall maintain a capital conservation buffer consisting of Common Equity Tier 1 capital. ²It shall equal 2.5% of the total risk exposure amount determined pursuant to Article 92 (3) of Regulation (EU) No 575/2013.

(2) Subsection (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 subsection (1) on an individual basis as well as to institutions within the meaning of Article 22 of Regulation (EU) No 575/2013.

**Section 10d
Countercyclical capital buffer**

(1) ¹In addition to maintaining the Common Equity Tier 1 capital required for complying with

- 1 the own funds requirement pursuant to Article 92 of Regulation (EU) No 575/2013,
- 2 higher own funds requirements pursuant to section 10 (3) to hedge risks and risk elements which are not covered by Article 1 of Regulation (EU) No 575/2013,
- 3 higher own funds requirements pursuant to section 10 (4), and

4 the capital conservation buffer pursuant to section 10c,

an institution shall maintain an institution-specific countercyclical capital buffer consisting of Common Equity Tier 1 capital. ²Sentence 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) ¹The 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 subsections. ²To 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) ¹The domestic countercyclical buffer rate shall be between 0% and 2.5% of the total risk exposure amount determined pursuant to Article 92 (3) of Regulation (EU) No 575/2013. ²The rate shall be set by BaFin in gradients of 0.25 percentage point and assessed at quarterly intervals. ³BaFin will take into account deviations in the credit-to-GDP ratio from its long-term trend and any recommendations made by the German Financial Stability Committee. ⁴BaFin may, if necessary, set a rate of more than 2.5%.

(4) ¹If 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. ²This date shall be not more than twelve months after the publication date of the initial definition or increase in the domestic countercyclical buffer rate. ³If 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) ¹If 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. ²BaFin may resume the procedure at any time, also before expiry of the announced time period, and redefine or increase the domestic countercyclical buffer rate. ³BaFin will publish the domestic countercyclical buffer rate defined for each quarter as well as the information set out under subsections (3) and (4) on its website.

(6) ¹BaFin may recognise 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 575/2013. ²As 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) 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) 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) Where BaFin recognises a countercyclical buffer rate pursuant to subsection (6) or defines a countercyclical buffer rate pursuant to subsection (7) or (8), BaFin will in each case publish this rate on its website and also provide at least the following additional information:

- 1 the EEA state or non-EEA state for which this rate shall apply,
- 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 those cases in which this date is less than twelve months after the publication date pursuant to this subsection, 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).

Section 10e
Systemic risk capital buffer

(1) ¹In addition to the Common Equity Tier 1 capital required for compliance with

- 1 the own funds requirement pursuant to Article 92 of Regulation (EU) No 575/2013,
- 2 higher own funds requirements to hedge risks and risk elements which are not covered by Article 1 of Regulation (EU) No 575/2013 pursuant to section 10 (3),

- 3 higher own funds requirements pursuant to section 10 (4)
- 4 the capital conservation buffer pursuant to section 10c, and
- 5 the institution-specific countercyclical buffer pursuant to section 10d,

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. ²The systemic risk buffer may be set for exposures located in Germany, another EEA state or a non-EEA state. ³This rate will be at least 1.0% of the risk-weighted exposure values of these exposures which are included in the total risk exposure amount to be calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013, and the rate will be set by BaFin in gradients of 0.5 percentage point. ⁴Sentences 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 is required to meet 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) ¹The 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.

²The systemic risk buffer may be set only if these risks cannot be mitigated or prevented with reasonable assurance by other measures under this Act with the exception of measures pursuant to section 48t or pursuant to Regulation (EU) No 575/2013 with the exception of measures pursuant to Articles 458 and 459 of Regulation (EU) No 575/2013. ³The 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 Area as a whole, such that the functioning of the EEA internal market is impeded. ⁴The systemic risk buffer shall be reviewed at least every two years.

(3) ¹Before setting a systemic risk buffer, BaFin shall notify the European Commission, EBA, the ESRB as well as the competent authorities of the other EEA states and non-EEA states affected thereby of its intention to set such a buffer. ²For a buffer rate of up to 3%, they shall be notified one month prior to its imposition. ³The notifications should in each case contain at least the following information:

- 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 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 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 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 the justification for why none of the existing measures under this Act or Regulation (EU) No 575/2013, excluding measures pursuant to Articles 458 and 459 of Regulation (EU) No 575/2013, alone or in combination, will be sufficient to prevent or mitigate the risk set out in number 1, taking into account the relative effectiveness of those measures;
- 6 the intended level of the systemic risk buffer.

(4) ¹A systemic risk buffer of up to 3.0% may be set in respect of exposures located in Germany and in non-EEA states. ²A systemic risk buffer of up to 3.0% may be set in respect of exposures located in another EEA state insofar as this is done uniformly for all exposures located in EEA states. ³A systemic risk buffer that is to be set at more than 3.0% may be set only after the European Commission has adopted an affirmative legal act pursuant to Article 133 (15) of Directive 2013/36/EU.

(5) ¹In derogation from subsection (4) sentence 3, BaFin may set a systemic risk buffer rate of more than 3.0% and up to 5.0% in respect of exposures located in Germany or in non-EEA states after

- 1 the European Commission has issued an affirmative recommendation or, where the European Commission has issued a negative recommendation,
- 2 BaFin has given the European Commission a justification why, contrary to the European Commission's recommendation, the imposition of the buffer is necessary.

²If 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 set the systemic risk buffer only if it has previously notified the competent authority of the country concerned, the European Commission and the ESRB of its intention to set a systemic risk buffer pursuant to sentence 1 in respect of these institutions as well. ³If the competent authority of an affected EEA state objects, within one month, 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, within one month, negative recommendations, BaFin may refer the matter to EBA for implementation of a procedure to settle disagreements pursuant to Article 19 of Regulation (EU) No 1093/2010.

(6) ¹The systemic risk buffer may also be set and be made public as an administrative order (*Allgemeinverfügung*) without prior consultation. ²The setting of the systemic risk buffer shall be published on BaFin's website. ³The publication shall contain at least the following information:

- 1 the systemic risk buffer rate,
- 2 the institutions, types or groups of institutions to which the systemic risk buffer applies,
- 3 a justification for the systemic risk buffer,
- 4 the date from which the institutions must apply the systemic risk buffer,
- 5 the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

⁴Publication pursuant to number 3 shall be waived if there is a danger that it might jeopardise financial market stability.

(7) Subsection (6) sentences 1 and 2 shall apply *mutatis mutandis* to the withdrawal of a systemic risk buffer.

(8) ¹BaFin 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. ²Subsection (6) shall apply *mutatis mutandis* to such recognition. ³When 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. ⁴BaFin shall notify the European Commission, EBA, the ESRB and the state that sets that systemic risk buffer rate of its recognition.

(9) 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 other EEA states to recognise the systemic risk buffer rate.

(10) Further details will be set forth in the statutory order pursuant to section 10 (1) sentence 1 number 5 letter (b).

Section 10f

Capital buffer for global systemically important institutions

(1) ¹BaFin will order global systemically important institutions, in addition to maintaining the Common Equity Tier 1 capital required to comply with

- 1 the own funds requirements pursuant to Article 92 of Regulation (EU) No 575/2013,
- 2 higher own funds requirements to hedge risks and risk elements pursuant to section 10 (3) which are not covered by Article 1 of Regulation (EU) No 575/2013,
- 3 higher own funds requirements pursuant to section 10 (4),
- 4 the capital conservation buffer pursuant to section 10c,
- 5 the institution-specific countercyclical buffer pursuant to section 10d, and

- 6 the systemic buffer pursuant to section 10e insofar as it is not counted towards the buffer for 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. ²BaFin 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) ¹BaFin, 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. ²Its quantitative analysis shall take into account the following categories:

- 1 size of the group,
- 2 cross-border activities of the group,
- 3 interconnectedness of the group with the financial system,
- 4 substitutability of the services or of the financial infrastructure provided by the group, and
- 5 complexity of the group.

³Institutions are required to report the microdata needed to perform the quantitative analysis annually to BaFin and to the Deutsche Bundesbank.

(3) ¹Depending on the results of the quantitative analysis, BaFin will assign a global systemically important institution to a particular size category. ²BaFin may

- 1 assign a global systemically important institution to a higher size category, or
- 2 designate an institution that is required to participate in the quantitative procedure, and 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.

(4) ¹Institutions are required to publish the indicators underlying the quantitative analysis annually. ²BaFin 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 subsection (1) and when classifying institutions as global systemically important institutions as well as when assigning them to a size category pursuant to subsections (2) and (3).

(5) BaFin will notify EBA, the ESRB, the European Commission and the institutions classified as global systemically important institutions of the decisions pursuant to subsections (1) to (3) and publish information on the existence of a buffer order and the buffer rate for global systemically important institutions as well as a list of the institutions classified as global systemically important institutions.

(6) Further details will be set forth in the statutory order pursuant to section 10 (1) sentence 1 number 5 letter (c).

Section 10g

Capital buffer for other systemically important institutions

(1) BaFin may order other systemically important institutions, in addition to maintaining the Common Equity Tier 1 capital required for compliance with

- 1 the own funds requirements pursuant to Article 92 of Regulation (EU) No 575/2013,
- 2 higher own funds requirements to hedge risks and risk elements pursuant to section 10 (3) which are not covered by Article 1 of Regulation (EU) No 575/2013,
- 3 higher own funds requirements pursuant to section 10 (4),
- 4 the capital conservation buffer pursuant to section 10c,
- 5 the institution-specific countercyclical buffer pursuant to section 10d, and
- 6 the systemic buffer pursuant to section 10e insofar as it is not counted towards the buffer for global systemically important institutions,

to maintain a capital buffer for other systemically important institutions (O-SII buffer) of up to 2.0% of the total risk exposure amount determined pursuant to Article 92 (3) of Regulation (EU) No 575/2013 on a consolidated, sub-consolidated or individual basis consisting of Common Equity Tier 1 capital.

(2) ¹BaFin, 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. ²In performing the qualitative and quantitative analysis at the relevant level, BaFin will notably take into account the following factors:

- 1 size,
- 2 economic importance for the EEA and the Federal Republic of Germany,
- 3 cross-border activities, and
- 4 interconnectedness with the financial system.

(3) ¹BaFin will review, at least annually, whether and at what rate the buffer for other systemically important institution is required. ²It shall in each case take note of any relevant

guidelines and recommendations published by EBA and the ESRB. ³A 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 European Economic Area as a whole, forming or creating an obstacle to the functioning of the EEA internal market.

(4) ¹At least one month before the publication of the decision to set or reset a buffer for other systemically important institutions, BaFin shall notify EBA, the ESRB and the European Commission as well as the competent authorities of any EEA states which may be affected of the proposed decision. ²Each notification shall contain at least the following information:

- 1 a detailed justification for why the setting of an O-SII buffer is justified and is proportionate to the risk identified,
- 2 a detailed assessment of the likely positive or negative impact of the O-SII buffer on the EEA internal market, and
- 3 the buffer rate that is to be set.

(5) BaFin will notify the respective other systemically important institution, EBA, the ESRB and the European Commission of the decisions pursuant to subsections (1) and (2) and publish a list of the institutions classified as being other systemically important institutions.

(6) Where the other systemically important institution is a subsidiary of

- 1 a global systemically important institution, or
- 2 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 subsection (2) shall not exceed the higher of 1.0% or of the buffer on a consolidated basis pursuant to Article 131 (4) or (5) of Directive 2013/36/EU.

(7) Further details will be set forth in the statutory order pursuant to section 10 (1) sentence 1 number 5 letter (d).

Section 10h

Combination of a systemic risk buffer, a buffer for global systemically important institutions and a buffer for other systemically important institutions

(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) Where a group is subject to a G-SII buffer pursuant to section 10f and also to

- 1 an O-SII buffer pursuant to section 10g on a consolidated basis exists, and

- 2 a systemic risk buffer pursuant to section 10e on a consolidated basis that was set not only for exposures located in the EEA state setting the buffer concerned,

only the highest of the three buffers shall apply.

(3) Where an institution, on an individual or sub-consolidated basis, is subject to an O-SII buffer pursuant to section 10g and a systemic risk buffer pursuant to section 10e that was set not only for exposures located in the EEA state setting the buffer concerned, only the higher of the two buffers shall apply.

(4) Where a systemic risk buffer pursuant to section 10e has been set solely for exposures located in the EEA state setting the buffer concerned, this buffer shall apply in addition to a G-SII buffer pursuant to section 10f or an O-SII buffer pursuant to section 10g.

Section 10i **Combined buffer requirement**

(1) The combined buffer requirement is the total Common Equity Tier 1 capital of an institution which is required to comply with the following capital buffer requirements:

- 1 the capital conservation buffer pursuant to section 10c,
- 2 the institution-specific countercyclical buffer pursuant to section 10d, and
- 3 in cases relating and pursuant to
 - (a) section 10h (1), the higher of the G-SII buffer pursuant to section 10f and the O-SII buffer pursuant to section 10g,
 - (b) section 10h (2), the highest of the G-SII buffer pursuant to section 10f, the O-SII buffer pursuant to section 10g and the systemic risk buffer pursuant to section 10e,
 - (c) section 10h (3), the higher of the systemic risk buffer pursuant to section 10e and the O-SII buffer pursuant to section 10g, or
 - (d) section 10h (4), the sum of the systemic risk buffer pursuant to section 10e and the G-SII buffer pursuant to section 10f or the O-SII buffer pursuant to section 10g.

(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 subsection (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) ¹An institution which does not meet or no longer meets the combined buffer requirement shall calculate the maximum distributable amount (MDA) and notify BaFin and the Deutsche Bundesbank of that MDA. ²The 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 BaFin and the Deutsche

Bundesbank upon request. ³Until BaFin has decided on the approval of the capital conservation plan pursuant to subsections (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 subsection (5),
- 2 create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the credit institution failed to meet the combined buffer requirement, and
- 3 make payments on Additional Tier 1 instruments.

⁴Further details will be set forth in the statutory order pursuant to section 10 (1) sentence 1 number 5 letter (e).

(4) Where an institution does not meet or no longer meets the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action pursuant to subsection (3) sentence 3 numbers 1 to 3, it shall notify this intention to BaFin and the Deutsche Bundesbank and provide the following information:

- 1 the amount of capital maintained by the institution, subdivided as follows:
 - (a) Common Equity Tier 1 capital;
 - (b) Additional Tier 1 capital;
 - (c) Tier 2 capital;
- 2 the amount of its interim and year-end profits;
- 3 the maximum distributable amount;
- 4 the amount of distributable profits and how it intends to allocate them between the following:
 - (a) dividend payments;
 - (b) share buybacks;
 - (c) payments on Additional Tier 1 instruments;
 - (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.

(5) A distribution in connection with Common Equity Tier 1 capital or Common Equity Tier 1 capital instruments shall include the following:

- 1 a payment of cash dividends,
- 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 a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26 (1) letter (a) of Regulation (EU) No 575/2013,
- 4 a repayment of amounts paid up in connection with capital instruments referred to in Article 26 (1) letter (a) of Regulation (EU) No 575/2013, and
- 5 a distribution of items referred to in Article 26 (1) letters (b) to (e) of Regulation (EU) No 575/2013.

(6) ¹An institution which does not meet or no longer meets its combined buffer requirement shall, in addition to the requirements set out in subsections (3) to (4), also prepare a capital conservation plan and submit it to BaFin and the Deutsche Bundesbank no later than five working days after it identified that it was failing to meet the combined buffer requirement.

²BaFin 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 estimates of income and expenditure and a forecast balance sheet,
- 2 measures to increase the capital ratios of the institution,
- 3 a plan and timeframe for the increase of own funds with the objective of fully meeting the combined buffer requirement, and
- 4 any other information that BaFin considers to be necessary to carry out the assessment required by subsection (7).

(7) ¹BaFin 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 BaFin considers appropriate. ²BaFin will decide on the approval within 14 days of receiving the capital conservation plan. ³Once the capital conservation plan has been approved, the institution may distribute distributable profits and implement measures pursuant to subsection (3) sentence 3 numbers 1 to 3 up to the maximum distributable amount.

(8) ¹If BaFin does not approve the capital conservation plan,

- 1 BaFin will order that the restrictions on distributions pursuant to subsection (3) shall continue to apply, or
- 2 BaFin shall allow the institution to implement measures within the meaning of subsection (3) sentence 3 numbers 1 to 3 up to a certain amount which shall not to exceed the maximum distributable amount.

²It may also require the institution to increase its own funds to a specified level within a specified period.

(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.

Section 11 Liquidity

(1) ¹Institutions shall invest their funds in such a way as to ensure that adequate funds for payment outflows (liquidity) are available at all times. ²The Federal Ministry of Finance is authorised, by way of a statutory order issued in consultation with the Deutsche Bundesbank, to lay down more detailed liquidity adequacy requirements, in particular in respect of

- 1 methods for assessing liquidity adequacy and the requisite technical standards,
- 2 business transactions that are to be recognised as liquid assets and payment obligations, including their assessment basis, and
- 3 the institutions' duty to provide BaFin and the Deutsche Bundesbank with the information required to demonstrate liquidity adequacy, including provisions on the contents, nature, scope and form of the information, on the frequency of provision thereof and on the permissible data storage media, transmission channels and data formats.

³The statutory order shall be consistent with the definition of savings deposits given in section 21 (4) of the Regulation on the Accounting of Credit Institutions and Financial Services Institutions (*Kreditinstituts-Rechnungslegungsverordnung*). ⁴The Federal Ministry of Finance may delegate this authority by way of a statutory order to BaFin, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ⁵The central associations representing the institutions shall be consulted before the statutory order is issued.

(2) When assessing institutions' liquidity, BaFin may in individual cases order institutions to meet liquidity requirements which go beyond the statutory order pursuant to subsection (1) if an institution's ongoing liquidity is not assured without such a measure.

(3) ¹When 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 428 of Regulation (EU) No 575/2013 as last amended so as to cover specific risks to which an institution is or may be exposed. ²In so doing, BaFin will take into account the criteria set out in Article 105 of Directive 2013/36/EU as last amended. ³BaFin may additionally impose restrictions on maturity transformation. ⁴Section 10a subsections (1) to (3) shall apply *mutatis mutandis*.

(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.

**Section 12
(Repealed)**

**Section 12a
Establishment of corporate relationships**

(1) ¹An institution, financial holding company or mixed financial holding company, when acquiring a participation in an undertaking established outside Germany or when establishing a corporate link with such an undertaking via which the undertaking becomes a subordinated undertaking within the meaning of section 10a, shall ensure that it or, in the case of a financial holding company or mixed financial holding company, the superordinated undertaking responsible for consolidation obtains the information required to meet the respective obligations pursuant to sections 10a and 25 (1). ²Sentence 1 shall not apply to the information required to meet the respective obligations pursuant to section 10a if an institution is unable to obtain the information required for consolidation for individual group entities pursuant to section 10a and the deduction of book values to be carried out pursuant to Article 36 in conjunction with Article 19 (2) letter (a) of Regulation (EU) No 575/2013 as last amended takes into account, in a manner similar to consolidation pursuant to section 10a (4) or (5), the risk entailed in acquiring the participation or establishing the corporate link and enables BaFin to assess compliance with this requirement. ³The institution, financial holding company or mixed financial holding company shall notify BaFin and the Deutsche Bundesbank without delay of the establishment, modification or discontinuation of a participation or close link as specified in sentence 1.

(2) ¹BaFin may prohibit the continuation of the participation or corporate link if the superordinated undertaking or the institution within the meaning of Article 22 of Regulation (EU) No 575/2013 does not obtain the data required to meet the respective obligations pursuant to sections 10a, 13 (3), section 25 (1) or pursuant to the statutory orders pursuant to section 10 (1) sentence 1 or section 13 (1) sentence 1 as well as pursuant to Articles 11 to 17 of Regulation (EU) No 575/2013 as last amended. ²The derogation pursuant to subsection (1) sentence 2 shall apply *mutatis mutandis* to the powers of prohibition conferred by sentence 1.

(3) (Repealed)

Division 2 LENDING BUSINESS

Section 13

Large exposures; authority to issue orders

(1) ¹The Federal Ministry of Finance, in consultation with the Deutsche Bundesbank, shall be authorised, by way of a statutory order that does not require the consent of the Bundesrat, to adopt, in the interests of the proper protection of institutions, groups of institutions, financial holding groups and mixed financial holding groups, more detailed provisions in respect of concentration risks as a supplement to Regulation (EU) No 575/2013 for large exposures

- 1 on the decision-making requirements of senior managers pursuant to subsection (2) as well as exceptions thereto,
- 2 on the nature, scope, timing and form of the information, transmission channels and data formats of notifications of master data on large exposures and well as feedback thereon as part of the large exposure reporting procedure pursuant to Article 394 (1) to (3) of Regulation (EU) No 575/2013 as last amended,
- 3 on the reporting of trading book business as a percentage of the sum of on- and off-balance sheet trading book business as well as the use of the waiver pursuant to Article 94 (1) of Regulation (EU) No 575/2013,
- 4 on the requirements which will be effective, until such time as the implementing technical standards pursuant to Article 394 (4) of Regulation (EU) No 575/2013 have come into effect, regarding the nature, scope, timing and form of the information as well as the permissible data storage media, transmission channels and data formats of large exposure notifications pursuant to Article 394 (1) to (3) of Regulation (EU) No 575/2013 and regarding the notification obligations existing under these provisions, which may be supplemented by the obligation to submit summary reports, insofar as this is necessary for the performance of BaFin's tasks, and especially to enable it to obtain consistent records for assessing the exposures entered into by the institutions, and
- 5 on the implementation of the exemption, permitted by Article 493 (3) of Regulation (EU) No 575/2013 as last amended, of certain exposures from the application of Article 395 (1) of Regulation (EU) No 575/2013 as last amended.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ³The central associations representing the institutions are to be consulted before the statutory order is issued.

(2) ¹An institution organised in the form of a legal person or a commercial partnership may – without prejudice to the validity of the legal transactions – incur a large exposure only by virtue of a unanimous decision by all its senior managers. ²The decision should be taken before the exposure is incurred. ³If this is not possible in individual cases owing to the urgency of the transaction, then the decision is to be taken promptly thereafter. ⁴The decision

is to be placed on record. ⁵If the large exposure has been incurred without a prior unanimous decision by all the senior managers and if the decision is not taken retrospectively within one month of the exposure having been incurred, the institution is to promptly notify BaFin and the Deutsche Bundesbank of this fact. ⁶If an exposure which has already been incurred becomes a large exposure owing to a reduction in the eligible capital pursuant to Article 4 (1) number 71 of Regulation (EU) No 575/2013, the institution may maintain this exposure – without prejudice to the validity of the legal transaction – only by virtue of a unanimous decision by all its senior managers to be taken promptly thereafter. ⁷The decision is to be placed on record. ⁸If the decision is not taken retrospectively within one month starting from the date on which the exposure became a large exposure, the institution is to promptly notify BaFin and the Deutsche Bundesbank of this fact.

(3) The decision-making requirements pursuant to subsection (2) shall apply *mutatis mutandis* to the superordinated undertaking if an undertaking of the group of institutions, financial holding group or mixed financial holding group makes use of Article 7 of Regulation (EU) No 575/2013.

(4) ¹In the case of loans from public promotional funds which the promotional institutions of the Federal Government and of state governments pass through to ultimate borrowers on the basis of independent loan agreements – if necessary via further pass-through institutions – via principal banks on predefined terms (principal bank principle), with regard to the application of Article 395 (1) of Regulation (EU) No 575/2013, for the institutions concerned, the individual ultimate borrowers may be deemed to be the borrowers of the interbank loan granted by the institutions if the credit exposures are assigned to the institutions as collateral. ²This shall apply *mutatis mutandis* to interest-subsidised loans granted by the promotional institutions using their own or public funds in accordance with the principal bank principle (own resources programmes), as well as to loans granted using non-public funds which a credit institution passes through to ultimate borrowers – if necessary via further pass-through institutions – via principal banks in accordance with statutory requirements.

**Section 13a
(Repealed)**

**Section 13b
(Repealed)**

**Section 13c
Intra-group transactions with mixed-activity holding companies**

(1) ¹A CRR institution which is a subsidiary of a mixed-activity holding company is to notify BaFin and the Deutsche Bundesbank of any significant intra-group transactions with mixed-activity holding companies or other subsidiaries of such mixed-activity holding companies. ²The Federal Ministry of Finance shall be authorised, by way of a statutory order – not requiring the consent of the Bundesrat – to be issued in consultation with the Deutsche Bundesbank, to specify in more detail:

- 1 the types of transactions to be notified and the thresholds used to identify which intra-group transactions are to be deemed significant transactions;
- 2 the limits for intra-group transactions and any restrictions with regard to the nature of intra-group transactions;
- 3 the nature, scope, timing and form of the information as well as the permissible data storage media and transmission channels.

³The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order provided that the statutory order is to be issued in agreement with the Deutsche Bundesbank. ⁴The central associations representing the institutions are to be consulted before the statutory order is issued.

(2) The CRR institution within the meaning of subsection (1) sentence 1 may – without prejudice to the validity of the legal transactions – conduct significant intra-group transactions with mixed-activity holding companies or other subsidiaries of such mixed-activity holding companies only by virtue of a unanimous decision by all its senior managers; section 13 (2) sentences 2 to 5 shall apply *mutatis mutandis*.

(3) ¹Without prejudice to the validity of the legal transactions, the CRR institution within the meaning of subsection (1) sentence 1 may not, without BaFin's permission, conduct any significant intra-group transactions with mixed-activity holding companies or other subsidiaries of such mixed-activity holding companies which exceed the limits laid down in the statutory order pursuant to subsection (1) sentence 2 or violate the restrictions regarding the nature of significant intra-group transactions laid down in the statutory order. ²BaFin may give permission pursuant to sentence 1 at its own discretion. ³Regardless of whether BaFin gives permission, the institution is to notify BaFin and the Deutsche Bundesbank promptly if the limits are exceeded or if the restrictions with regard to the nature of intra-group transactions are violated. ⁴BaFin may

- 1 require the CRR institution within the meaning of subsection (1) sentence 1 to back the excess amount with own funds if the limits set in the statutory order pursuant to subsection (1) sentence 2 are exceeded;
- 2 use appropriate and necessary measures to stop or prevent violations of the restrictions regarding the nature of intra-group transactions laid down in the statutory order pursuant to subsection (1) sentence 2.

(4) ¹In order to identify, quantify, monitor and manage significant intra-group transactions within a mixed-activity group, the CRR institutions belonging to the group must have an appropriate risk management structure and appropriate internal control mechanisms, including a proper reporting system and proper accounting procedures; this is without prejudice to section 13. ²Section 10a (8), section 25a (1) sentence 2 as well as Article 11 (1) sentences 2 and 3 of Regulation (EU) No 575/2013 shall apply *mutatis mutandis*.

**Section 13d
(Repealed)**

**Section 14
Loans of €1.5 million or more**

(1) ¹Credit institutions, CRR investment firms that deal on their own account within the meaning of Annex 3 number 1 of Directive 2004/39/EC, financial services institutions within the meaning of section 1 (1a) sentence 2 number 4, 9 or 10, financial institutions within the meaning of Article 4 (4), number 26 of Regulation (EU) No 575/2013 in conjunction with Annex 1 number 2 of Directive 2013/36/EU that engage in factoring and the undertakings and agencies mentioned in section 2 (2) (undertakings participating in the reporting procedures for loans of €1.5 million or more) shall report to the Deutsche Bundesbank's Central Credit Register (*Evidenzzentrale*) on a quarterly basis (observation period) those borrowers whose credit volume amounts to €1,500,000 or more (threshold for loans of €1.5 million or more); contents of the reports, reporting deadlines and more detailed provisions on the observation period shall be laid down in the statutory order pursuant to section 22. ²At the same time, superordinated undertakings within the meaning of section 10a shall report in respect of the undertakings belonging to the group within the meaning of sentence 1, which is to be applied as appropriate. ³This shall not apply if these undertakings are themselves required to submit reports pursuant to sentence 1 or if they are exempt or released from the reporting requirement pursuant to section 2 (4), (7), (8) or (9a) or if the book value of the participating interest in the undertakings belonging to the group is deducted from the superordinated undertaking's own funds pursuant to Article 36 in conjunction with section 19 (2) sentence a of Regulation (EU) No 575/2013 as last amended. ⁴Those undertakings belonging to the group which are not themselves required to submit reports pursuant to sentence 1 shall transmit the requisite data to the superordinated undertaking. ⁵In the case of syndicated loans of €1 million or more, sentence 1 shall apply even if the share of the individual undertaking does not amount to €1 million.

(2) ¹If it is found that loans of €1.5 million or more have been granted to a single borrower by more than one undertaking, the Deutsche Bundesbank shall notify the reporting undertakings. ²This notification shall include information about the borrower's aggregate indebtedness and the aggregate indebtedness of the single borrower unit to which the borrower belongs, about the number of undertakings involved as well as information about the forecast probability of default within the meaning of the Articles 92 to 386 of Regulation (EU) No 575/2013 in respect of this borrower if an undertaking has itself reported such a probability of default. ³The notification shall be structured in accordance with the regulation pursuant to section 22. ⁴The Deutsche Bundesbank shall notify an undertaking required to submit reports at the latter's request of the indebtedness of a borrower or anticipated borrower or, if the borrower or anticipated borrower forms part of a single borrower unit, of the indebtedness of the single borrower unit. ⁵In the case of an anticipated borrower, the undertaking shall inform the Deutsche Bundesbank upon request of the amount of the intended loan and prove that the anticipated borrower has consented to the disclosure of this information. ⁶The undertakings participating in the reporting procedures for loans of €1.5

million or more and the Deutsche Bundesbank may submit the report pursuant to subsection (1), the notification pursuant to sentence 1 and the information pursuant to sentence 4 also by electronic data transmission. ⁷The details of the procedures shall be stipulated in the regulation pursuant to section 22. ⁸The Deutsche Bundesbank may transmit personal data relating to several borrowers to the reporting undertaking to the extent that this is necessary for the purpose of assigning the report pursuant to subsection (1) to a particular borrower. ⁹Such data may not contain information about the financial circumstances of the borrowers. ¹⁰The persons employed by an undertaking required to submit reports may not disclose information notified to the undertaking pursuant to this subsection to third parties and may not exploit such information. ¹¹For the purpose of monitoring the protection of data on the part of the responsible parties, the Deutsche Bundesbank shall log the time, the data transmitted, and the parties involved during each transmission of data. ¹²The log data may not be used for purposes other than those specified above. ¹³The log data shall be kept for at least 18 months and must be deleted at the latest after 24 months.

(3) ¹If several debtors are deemed to be a single borrower pursuant to section 19 (2), the indebtedness and information about the forecast probabilities of default of the individual debtors shall also be indicated in the reports pursuant to subsection (1). ²The indebtedness of individual debtors and the information about the forecast probabilities of default shall be imparted only to those undertakings which themselves, or whose undertakings belonging to the group within the meaning of subsection (1), have incurred an exposure to these debtors or have reported information about the forecast probabilities of default of these debtors.

(4) The Deutsche Bundesbank may, in agreement with BaFin and pursuant to section 4b of the Federal Data Protection Act, provide credit registers in other countries with data which it holds on borrowers, including for the purposes of forwarding to lenders located in those countries.

Section 15

Loans to managers etc

(1) ¹Loans to

- 1 senior managers of the institution,
- 2 partners of the institution who are not senior managers if the institution is organised in the form of a commercial partnership or private limited company, and to general partners of an institution who are not senior managers if the institution is organised in the form of a limited partnership company,
- 3 members of a governing body of the institution appointed to monitor the management of the institution if the monitoring powers of the body are laid down by law (supervisory body),
- 4 holders of a general commercial power of attorney and authorised officers of the institution empowered to represent it in all aspects of its business,
- 5 spouses, life partners and minors of the persons specified in numbers 1 to 4,

- 6 silent partners of the institution,
- 7 undertakings organised in the form of a legal person or commercial partnership if a senior manager, a holder of a general commercial power of attorney or an authorised officer of the institution empowered to represent it in all aspects of its business is a legal representative or a member of the supervisory body of the legal person or a partner in the commercial partnership,
- 8 undertakings organised in the form of a legal person or commercial partnership if a legal representative of the legal person, a partner in the commercial partnership, a holder of a general commercial power of attorney or an authorised officer of this undertaking empowered to represent it in all aspects of its business is a member of the supervisory body of the institution,
- 9 undertakings in which the institution or a senior manager holds a participating interest of more than 10% of the undertaking's capital or in which the institution or a senior manager is a general partner,
- 10 undertakings which hold a participating interest in the institution of more than 10% of the institution's capital,
- 11 undertakings organised in the form of a legal person or commercial partnership if a legal representative of the legal person or a partner in the commercial partnership holds a participating interest in the institution of more than 10% of its capital, and
- 12 general partners, senior managers, members of the executive board or supervisory body, holders of a general commercial power of attorney and authorised officers empowered to represent in all aspects of business of an undertaking controlled by or controlling the institution, as well as their spouses, life partners and minors,

(loans to managers etc) may be granted only by virtue of a unanimous decision by all of the institution's senior managers and – other than as part of staff programmes – only on market terms and with the explicit permission of the supervisory body or, in the case of number 12, of the supervisory body of the undertaking controlling the institution; the above provisions pertaining to commercial partnerships shall apply *mutatis mutandis* to other partnerships. ²A unanimous decision by all senior managers and the explicit approval of the supervisory body may be dispensed with if a CRSA risk weight of 0% can be applied to a loan to an undertaking pursuant to sentence 1 numbers 9 and 10 in accordance with Article 113 of Regulation (EU) No 575/2013. ³A participating interest within the meaning of sentence 1 numbers 9 to 11 shall be deemed to be any holding of shares in the undertaking amounting to not less than one-quarter of the capital (nominal capital, sum total of the capital shares), irrespective of the duration of the holding. ⁴The authorisation of withdrawals in excess of the remuneration due to a senior manager or a member of the supervisory body and, in particular, the authorisation of advances on such remuneration, shall be deemed to be equivalent to the granting of a loan. ⁵Loans to managers etc which are not granted on market terms shall be backed by liable capital at the decree of BaFin pursuant to Article 26 of Regulation (EU) No 575/2013 as last amended.

(2) ¹In individual cases BaFin may impose upper limits for the granting of loans to managers etc; it shall be entitled to do so even after such a loan has been granted. ²Loans to managers etc which exceed the limits imposed by BaFin shall be reduced to the stipulated limits upon a further order issued by BaFin; in the meantime, they shall be backed with liable capital pursuant to Article 26 of Regulation (EU) No 575/2013 as last amended.

(3) Subsection (1) shall not apply to

- 1 loans to holders of a general commercial power of attorney or authorised officers of an institution empowered to represent it in all aspects of its business as well as to their spouses, life partners and minors if the loan does not exceed the amount of one annual salary of the holder of a general commercial power of attorney or of the authorised officer of the institution empowered to represent it in all aspects of its business,
- 2 loans to persons or undertakings specified in subsection (1) sentence 1 numbers 6 to 11 if the loan amounts to less than 1% of the institution's liable capital pursuant to Article 4 (1) number 71 of Regulation (EU) No 575/2013 or to less than €50,000, and
- 3 loans which are increased by no more than 10% of the amount approved pursuant to subsection (1) sentence 1.

(4) ¹The decision by the senior managers and the decision on approval shall be taken before the loan is granted. ²The decisions shall include provisions on the interest rate payable on, and the repayment of, the loan. ³They shall be placed on record. ⁴If a loan to be granted pursuant to subsection (1) sentence 1 numbers 6 to 11 is urgent, it is sufficient if all the senior managers and the supervisory body promptly approve the granting of the loan subsequently. ⁵If the decision by the senior managers has not been taken retrospectively within two months or the decision by the supervisory body has not been taken retrospectively within four months of the date on which the loan was granted, the institution shall promptly notify BaFin of this fact. ⁶For certain lending operations and types of lending operations, the decision by the senior managers and the decision on the approval of loans to the persons specified in subsection (1) sentence 1 numbers 1 to 5 and 12 may be taken in advance, but no more than one year in advance.

(5) If, contrary to subsection (1) or (4), a loan is granted to a person specified in subsection (1) sentence 1 numbers 1 to 5 and 12, it shall be repaid immediately, irrespective of any arrangements to the contrary, unless all of the senior managers and the supervisory body promptly approve the granting of the loan subsequently.

**Section 16
(Repealed)**

**Section 17
Liability**

(1) If a loan is granted contrary to the provisions of section 15, the managers who thereby violate their duty and the members of the supervisory body who, in violation of their duty, fail to intervene to prevent the granting of an intended loan despite having knowledge thereof, shall be jointly and severally liable to the institution for any loss arising; the onus shall be on the managers and the members of the supervisory body to prove that they did not act culpably.

(2) ¹The institution's right to compensation may also be asserted by its creditors insofar as they cannot obtain satisfaction from the institution. ²The liability to compensate the creditors shall not be annulled by a waiver or by composition on the part of the institution nor, in the case of institutions organised in the form of a legal person, by the fact that the loan was granted by virtue of a decision by the institution's supreme body (shareholders' meeting, general meeting, partners' meeting).

(3) Claims under subsection (1) shall be barred under the Statute of Limitations after five years.

**Section 18
Borrower documentation**

(1) ¹A credit institution may grant a loan amounting in the aggregate to more than €750,000 or 10% of the institution's liable capital pursuant to Article 4 (1) number 71 of Regulation (EU) No 575/2013 only if it requires the borrower to disclose his or her financial situation, in particular by submitting the annual accounts. ²The credit institution may waive this requirement if, in the light of the collateral provided or of the co-obligors, there is evidently no reason to require such disclosure. ³The credit institution may waive the requirement of ongoing disclosure if

- 1 the loan is secured by mortgages on residential property that is used by the borrower himself,
- 2 the loan does not exceed four-fifths of the loan value of the pledged property within the meaning of section 16 (1) and (2) of the Pfandbrief Act, and
- 3 the borrower regularly effects the interest payments and principal repayments owed by him.

⁴Disclosure is not required in the case of loans to

- 1 central governments or central banks outside Germany, the Federal Government, the Deutsche Bundesbank or a legally dependent special fund of the Federal Government if

they would be assigned a credit risk standardised approach risk weight (CRSA risk weight) of 0% without collateral,

- 2 multilateral development banks or international organisations if they would be assigned a CRSA risk weight of 0% without collateral, or
- 3 regional governments or local authorities in another EEA states, a state government, a local government, a local government association, a legally dependent special fund of a state government, a local government or a local government association or public-sector entities if they would be assigned a CRSA risk weight of 0% without collateral, as well as

(2) ¹Before the conclusion of a consumer loan agreement or a contract on remunerated financial accommodation, institutions shall assess the consumer's creditworthiness. ²The assessment may be based on information provided by the consumer and, where required, information supplied by agencies whose business it is to collect, store or change, for transmission, personal data which may be used to assess consumers' creditworthiness. ³In the case of a change in the net amount of the loan, the data shall be updated. ⁴In the case of a significant increase in the net amount of the loan, creditworthiness shall be reassessed. ⁵This is without prejudice to the provisions for the protection of personal data.

**Section 18a
(Repealed)**

**Section 18b
(Repealed)**

Section 19

Concept of the loans for section 14 and of borrowers for sections 14, 15 and 18 (1)

(1) ¹Loans within the meaning of section 14 are asset items, derivatives (with the exception of short positions in call options) as well as the guarantees assumed in respect thereof, and other off-balance-sheet items. ²The positions to be deducted pursuant to sentence 1 are

- 1 balances with central banks and postal giro offices,
- 2 debt instruments issued by public authorities and bills of exchange eligible for refinancing at central banks,
- 3 cash items in the process of collection for which corresponding payment has already been advanced,
- 4 exposures to credit institutions and customers (including the trade exposures of credit institutions engaging in commodities trading), as well as capitalised rights to payments, under leasing agreements, which the lessee is or can be obliged to pay, and the lessee's option rights to buy the leased assets, which provide an incentive to exercise the option right,

- 5 debt securities and other fixed-income securities, unless they evidence titles coming under the derivatives specified in sentence 1,
- 6 shares and other non-fixed-income securities, unless they evidence titles coming under the derivatives specified in sentence 1,
- 7 participating interests,
- 8 shares in affiliated undertakings,
- 9 (repealed)
- 10 other assets, insofar as they are subject to a counterparty risk.

³The following are deemed to be other off-balance-sheet transactions within the meaning of sentence 1:

- 1 bills of exchange in circulation drawn by the credit institution, discounted and credited to borrowers,
- 2 endorsement liabilities arising from rediscounted bills,
- 3 sureties and guarantees in respect of asset items,
- 4 warranties and indemnities and other sureties and guarantees besides those specified in number 3, insofar as they do not refer to the derivatives specified in sentence 1,
- 5 the issuing and confirmation of documentary credits,
- 6 unconditional commitments by building and loan associations for the settlement of third-party interim and bridging loans to contract holders,
- 7 liability arising from the provision of collateral for third-party liabilities,
- 8 asset items deducted from the transferor's portfolio which he/she has transferred to a third party subject to an agreement that he/she shall repurchase them upon request,
- 9 sales of asset items with recourse, in respect of which the credit risk remains with the selling institution,
- 10 assets purchased under outright forward purchase agreements,
- 11 forward deposits placed,
- 12 purchase and refinancing commitments,
- 13 undrawn credit commitments,
- 14 credit derivatives,
- 15 not yet capitalised rights to payments, under leasing agreements, which the lessee is or can be obliged to pay, and the lessee's option rights to buy the leased assets, which provide an incentive to exercise the option right, as well as
- 16 off-balance-sheet transactions, insofar as they are subject to a counterparty risk and are not included in numbers 1 to 14.

(1a) ¹Derivatives within the meaning of this provision are futures or options contracts in the form of a purchase, exchange or similar transaction relating to an underlying, whose value is determined by the underlying and whose value can change in future owing to a deferred settlement date on the part of at least one contracting party, including financial contracts for differences. ²The underlying within the meaning of sentence 1 can also be a derivative.

(2) ¹Borrowers within the meaning of section 14 are deemed to be

- 1 two or more natural or legal persons or commercial partnerships if one of them can exercise a direct or indirect controlling influence over the other or others. A direct or indirect controlling influence applies in particular
 - (a) in the case of all undertakings which are consolidated within the meaning of section 290 (2) of the German Commercial Code, or
 - (b) in the case of all undertakings which are bound by agreements which provide that one undertaking is obliged to transfer its entire profit to another undertaking, or
 - (c) if 50% or more of the voting rights or of the capital of an undertaking is held by another undertaking, irrespective of whether these shares are held in trust.
- 2 commercial partnerships or incorporated companies and each general partner, as well as other partnerships and each partner,
- 3 all undertakings that belong to the same group within the meaning of section 18 of the Companies Act (*Aktiengesetz*).

²The general defining characteristics pursuant to sentences 1 and 3 shall be applied cumulatively.

(3) Borrowers within the meaning of sections 15 to 18 (1) are deemed to be two or more natural or legal persons which form a group of connected clients pursuant to Article 4 (1) number 39 of Regulation (EU) No 575/2013.

(4) (Repealed)

(5) In the acquisition of monetary claims against payment, the seller of the claims shall be deemed to be the borrower within the meaning of sections 14 to 18 if he/she is responsible for the satisfaction of the transferred claim or is obliged to repurchase it at the purchaser's request; otherwise, the claim debtor shall be deemed to be the borrower.

(6) (Repealed)

Section 20
Exceptions to the obligations pursuant to section 14

The following are not deemed to be loans within the meaning of section 14:

- 1 advance payments in exchange rate transactions which are settled within two business days of the advance payment under the usual clearing procedure;
- 2 advance payments in securities transactions which are settled within five business days of the advance payment under the usual clearing procedure;
- 3 in the case of the conduct of payment transactions including the execution of payment services, settlement and clearing in any currency and correspondent banking business or providing services for clients for the clearing, settlement and safe custody of financial instruments, late incoming payments on financing and other retail loans that run until the following business day at longest,
- 4 Monetary collateral deposited for clients in the context of financial market operations and whose agreed maturity or period of notice does not exceed one business day,
- 5 loans that are, in the case of the conduct of payment transactions including the execution of payment services, settlement and clearing in any currency and correspondent banking business, issued to institutions providing these services if the loans are repayable by the close of business,
- 6 exposures written off, and
- 7 drawings against credited amounts under the direct debit procedure which are marked "Subject to receipt" (*"Eingang vorbehalten"*).

Section 20a
(Repealed)

Section 20b
(Repealed)

Section 20c
(Repealed)

Section 21
Concept of exposure for sections 15 to 18 (1)

(1) ¹The following shall be deemed to be exposures within the meaning of sections 15 to 18 (1):

- 1 money loans of all types, monetary claims acquired against payment, acceptance credits and exposures arising from registered bonds, with the exception of registered Pfandbriefe and municipal bonds;

- 2 the discounting of bills of exchange and cheques;
- 3 money claims arising from a credit institution's other commercial transactions, other than credit cooperatives' claims in respect of transactions in goods, unless these claims are prolonged beyond the customary period;
- 4 an institution's guarantees and other warranties and an institution's liability arising from the provision of collateral for third-party debts;
- 5 the obligation to meet money claims sold or to buy them back at the purchaser's request;
- 6 an institution's ownership of stocks or shares in another undertaking amounting to at least a quarter of the associate undertaking's capital (nominal capital, sum total of the capital shares) irrespective of the duration of ownership;
- 7 assets in respect of which an institution, as the lessor, has concluded lease agreements, less any items created on account of the settlement or sale of claims arising from these lease agreements; such items may be deducted up to the book value of the respective leased asset.

²Any collateral provided to, and balances maintained with, the institution by the borrower shall be disregarded.

(2) The following shall not be deemed to be exposures within the meaning of sections 15 to 18:

- 1 loans granted to the Federal Government, a legally dependent special fund of the Federal Government or of a Land Government, a Land Government, a local authority or a local authority association;
- 2 unsecured claims on other institutions arising from balances maintained with those institutions and serving the purpose of financial investment only, which fall due within three months at the latest; claims of registered cooperative societies on their regional institutions, of savings banks on their regional institutions, and of such regional institutions on their central credit institutions may fall due later;
- 3 bills of exchange purchased from other institutions which an institution has accepted, endorsed or issued as promissory notes and which have a period to maturity of not more than three months and are normally traded in the money market;
- 4 exposures written off.

(3) Section 15 (1) sentence 1 Nos 6 to 11 and section 18 shall not apply to

- 1 loans insofar as they satisfy the requirements of sections 14 and 16 (1) and (2) of the Pfandbrief Act (mortgages);
- 2 loans with periods to maturity of no more than 15 years secured by ship mortgages insofar as they satisfy the requirements of section 22 (1), (2) sentence 1 and (5)

sentence 3, section 23 (1) and (4) as well as section 24 (2) in conjunction with (3) of the Pfandbrief Act;

- 3 loans granted to a domestic public-law legal person not specified in subsection (2) number 1, the European Union, the European Atomic Energy Community or the European Investment Bank;
- 4 loans which are guaranteed or secured in some other way by the Federal Government, one of its special funds, a Land Government, a local authority or a local authority association (publicly guaranteed loans).

(4) The following are not deemed to be exposures and loans within the meaning of section 18 (1):

- 1 loans based on the acquisition against payment of a claim arising from non-banking commercial transactions if
 - (a) claims arising from non-banking commercial transactions against the relevant debtor are acquired on an ongoing basis,
 - (b) the seller of the claim is not responsible for the satisfaction of the claim, and
 - (c) the claim falls due within three months of the date on which it was purchased;
- 2 exposures insofar as they are secured by collateral in the form of
 - (a) cash on deposit with the lending institution or a third party institution which is the parent undertaking or a subsidiary of the lending institution, or cash which the institution receives under the issue of a credit linked note, or
 - (b) certificates of deposit or similar paper issued by the lending institution or a third party institution which is the parent undertaking or a subsidiary of the lending institution that are lodged with such an institution, and the more detailed provisions of Articles 192 to 241 of Regulation (EU) No R575/2013 on credit risk mitigation are fulfilled.

Section 22

Statutory authorisation for loans of €1.5 million or more

¹The Federal Ministry of Finance shall be authorised to issue by way of a statutory order that does not require the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more detailed provisions on

- 1 determining the loan amounts and borrowers
- 2 calculating the credit equivalent amounts of derivatives as well as of securities repurchase agreements and securities lending and borrowing and of other transactions comparable thereto as well as calculating the warranties assumed for these transactions,
- 3 assigning exposures or loans to borrowers,

- 4 the contents of the reports, reporting deadlines and observation period pursuant to section 14 (1) sentence 1,
- 5 additional data to be provided in the notification pursuant to section 14 (2) sentence 2 insofar as this is necessary owing to information which the Deutsche Bundesbank has received from central credit registers in other countries,
- 6 details concerning the data to be provided in the notification pursuant to section 14 (2) sentence 2, in particular the prerequisites for and the contents of the information feedback on the forecast probabilities of default, as well as the structure of this notification pursuant to section 14 (2) sentence 3, and
- 7 details concerning the electronic data transmission procedure pursuant to section 14 (2) sentence 6.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ³Before the regulation is issued, the central associations of the institutions shall be consulted.

Division 2a REFINANCING REGISTER

Section 22a

Register-keeping undertaking

(1) ¹If the refinancing undertaking is a credit institution or one of the entities mentioned in section 2 (1) Nos 1 to 3a and if an undertaking within the meaning of section 1 (24) sentence 1 numbers 1 to 6 is entitled to the transfer of a claim on the part of the refinancing undertaking or a lien on property held by the refinancing undertaking by way of collateral, these assets may be entered in a refinancing register kept by the refinancing undertaking; this applies accordingly to registered liens on aircraft and ship mortgages. ²Each refinancing transaction is to be entered in a separate section.

(1a) Subsection (1) shall apply *mutatis mutandis* if the exposures and mortgages are held in trust by the refinancing undertaking.

(2) ¹This subsection shall not create an obligation on the part of the refinancing undertaking or the refinancing intermediary to keep a refinancing register. ²The keeping of a register may cease or be transferred only under the conditions set out in section 22k.

(3) It is not permissible to outsource register-keeping activities.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to refinancing intermediaries which are a credit institution or one of the entities mentioned in section 2 (1) numbers 1 to 3a.

Section 22b
Keeping a refinancing register for third parties

(1) ¹If the refinancing undertaking is neither a credit institution nor one of the entities mentioned in section 2 (1) numbers 1 to 3a, the refinancing undertaking's assets mentioned in section 22a (1) sentence 1, to which an undertaking within the meaning of section 1 (24) sentence 1 numbers 1 to 6 has a transfer claim, may be entered in a refinancing register kept by a credit institution or the KfW banking group. ²If the refinancing register also contains assets which the register-keeping undertaking or another undertaking is obliged to transfer, then each obligor of transfer is to be entered in a separate section within the same refinancing register and each refinancing transaction is to be entered in a subsection of this section.

(2) ¹If the refinancing undertaking is a credit institution for which the keeping of its own refinancing register constitutes an undue burden in terms of the nature and scope of its business operations, BaFin, upon the refinancing undertaking's application, shall consent to the refinancing register being kept by another credit institution. ²BaFin's consent shall be deemed to have been given if it is not denied within one month of the application having been submitted.

(3) Entries made for other credit institutions without BaFin's permission pursuant to subsection (2) shall be invalid.

(4) Section 22a (2) and (3), also in conjunction with (4), shall apply *mutatis mutandis*.

Section 22c
Refinancing intermediaries

Sections 22d to 22o apply accordingly to refinancing registers which are kept by a refinancing intermediary pursuant to section 22a (4) or for a refinancing intermediary pursuant to section 22b (4).

Section 22d
Refinancing registers

(1) ¹A refinancing register may be kept in electronic form provided that sufficient precautionary measures have been taken to prevent a loss of data. ²The Federal Ministry of Finance must lay down, by means of a statutory ordinance which does not require the Bundesrat's approval, details regarding the form which a refinancing register should take as well as the way in which entries are to be made. ³The Federal Ministry of Finance can transfer this authority to BaFin by means of a statutory ordinance.

(2) ¹The register-keeping undertaking must record the following in the refinancing register.

- 1 the exposures or collateral to which the undertakings entered in the register as the parties entitled to transfer within the meaning of section 1 (24) sentence 1 numbers 1 to 6 have a transfer claim,
- 2 the entitled transferee
- 3 The date and time of registration.
- 4 If an asset serves as collateral, the legal basis, scope and ranking of the collateral as well as the date on which the contract containing the legal basis for the collateralisation was concluded.

²With regard to numbers 1 and 4, the information entered shall be deemed to be sufficient if third parties, in particular, the administrator, the creditors' trustee, BaFin or an insolvency administrator, are able to clearly define and identify the entries concerned. ³If the transferee is a Pfandbrief bank, then it as well as the cover pool monitor appointed pursuant to section 7 (1) of the Pfandbrief Act shall be informed of the entry. ⁴If the entitled transferee is an insurance undertaking, then it as well as the trustee appointed pursuant to section 70 of the Insurance Supervision Act is to be informed of the entry.

(3) If data required pursuant to subsection (2) are lacking or if entries are incorrect or do not allow the details to be clearly defined and identified, the assets concerned shall be deemed not to have been entered properly.

(4) ¹Receivables can also be registered and assigned to the entitled transferee after registration if transfer has been excluded through a verbal or implied agreement with the obligor. ²This is without prejudice to section 354a of the Commercial Code as well as any statutory restraints on disposition.

(5) ¹Entries may be deleted only with the consent of the entitled transferee. ²If the entitled transferee is a Pfandbrief bank or an insurance undertaking, entries may be deleted only with the consent of the trustee of the Pfandbrief bank or the trustee of the insurance undertaking. ³The date and time of deletion is to be recorded in all cases. Incorrect entries may be deleted with the administrator's consent; (2) sentences 3 and 4 shall apply *mutatis mutandis*. ⁵The correction, the date and time of said correction, and the administrator's consent are to be recorded in the refinancing register. ⁶Re-registration without deletion of the previous entry shall not produce any legal effects.

(6) The entitled transferee may, at any time, demand from the administrator an extract of the entries in the refinancing register which relate to the entitled transferee, on which the administrator has confirmed that this is identical with the record in the refinancing register.

Section 22e

Appointment of an administrator

(1) ¹Every register-keeping undertaking must appoint a natural person as an administrator of the refinancing register (the administrator). ²The tenure of office shall expire upon cessation of the register or when a different person is appointed as the creditors' trustee of the refinancing register pursuant to section 22l (4) sentence 1.

(2) ¹The administrator is appointed by BaFin on the recommendation of the register-keeping undertaking. ²BaFin shall appoint the recommended person as the administrator if he appears to have the required independence, trustworthiness and expertise. ³In making its decision, BaFin must take adequate account of the interests of the entitled transferee entered or to be entered in the refinancing register.

(3) ¹The appointment may be for a limited period of time; BaFin may relieve the administrator from office at any time on objective professional grounds. ²Subsection (2) sentence 3 shall apply *mutatis mutandis*. ³If the administrator is employed or mandated by a party involved in a specific refinancing transaction, his appointment shall be suspended for the term of this refinancing transaction.

(4) ¹A deputy administrator is to be appointed upon the register-keeping undertaking's application. ²An application is permissible at any time. ³Subsections (2) and (3) shall apply accordingly to the appointment and dismissal of the deputy administrator. ⁴If the administrator's appointment is terminated pursuant to subsection (3) sentence 1, if the appointment is suspended or if the administrator is prevented from performing his tasks, the deputy administrator shall take his place.

(5) ¹If, over a considerable period of time, an administrator is not available, if he is prevented from performing his tasks or if his appointment has been suspended without a deputy administrator taking his place, BaFin shall appoint a suitable administrator without consulting the register-keeping undertaking. ²Subsection (2) sentence 3 shall apply *mutatis mutandis*. ³The register-keeping undertaking must inform BaFin without delay if any of the circumstances described in sentence 1 arises.

(6) ¹The administrator and his deputy shall be liable to the register-keeping undertaking and the transferees for their activities only in the case of intent or gross negligence. ²The liability for damages of the administrator or deputy administrator shall be limited to €1 million for cases of gross negligence. ³It cannot be contractually excluded or restricted. ⁴If the administrator's or deputy administrator's liability is covered by an insurance policy, an excess of one-and-a-half times the annual remuneration laid down pursuant to section 22i (1) shall be stipulated. ⁵The register-keeping undertaking may conclude the insurance contract for the benefit of the administrator and the deputy administrator and pay the premiums.

Section 22f
Administrator's relationship with BaFin

(1) The administrator shall provide BaFin with information about any findings and observations made in performing his/her tasks and shall also notify BaFin on his/her own initiative if circumstances exist which suggest that the register is not being kept properly.

(2) The administrator is not bound by BaFin's instructions.

Section 22g
Administrator's tasks

(1) ¹The administrator is to ensure that the refinancing register is kept in accordance with regulations. ²However, his tasks do not include checking whether the registered assets are the refinancing undertaking's assets or registrable assets pursuant to section 22d (2).

(2) ¹The administrator of the refinancing register shall ensure, in particular, that

- 1 the refinancing register contains the information required pursuant to section 22d (2);
- 2 the dates and times given in the refinancing register are correct;
- 3 the entries have not subsequently been altered.

²In all other respects, the administrator of the refinancing register does not have to check whether the refinancing register's contents are correct.

(3) The administrator may make use of other persons and entities in performing his/her tasks.

Section 22h
**Administrator's relationship with the register-keeping undertaking and
the refinancing undertaking**

(1) ¹The administrator is authorised to inspect the register-keeping undertaking's books and documents at any time unless these are in no way connected with the keeping of the refinancing register. ²In the cases cited in section 22b, the administrator also has the same powers vis-à-vis the refinancing undertaking.

(2) ¹The administrator is bound to secrecy with regard to any facts of which he becomes aware through inspection of the register-keeping undertaking's books and documents or those of the refinancing undertaking (should these undertakings not be identical). ²He may notify BaFin or provide it with information only about facts connected with the monitoring of the refinancing register.

(3) Disputes between the administrator and the register-keeping undertaking or, if different, the refinancing undertaking shall be settled by BaFin.

Section 22i Administrator's remuneration

(1) The administrator and his or her deputy shall receive from the register-keeping undertaking appropriate remuneration, the amount of which shall be set by BaFin, as well as reimbursement of reasonable expenses.

(2) (Repealed)

(3) Other than in the case stipulated in subsection (1), it is impermissible for the register-keeping undertaking, the refinancing undertaking for which the register is kept and the entitled transferees to make payments to the administrator of the refinancing register.

Section 22j Effects of entry in the refinancing register

1) ¹A refinancing undertaking's assets which have been properly entered in a refinancing register can, in the event of the refinancing undertaking's insolvency, be separated from the insolvent's estate by the entitled transferee pursuant to section 47 of the German Insolvency Code (*Insolvenzordnung*). ²The same applies to assets which supersede the assets properly entered in a refinancing register. ³A transferee can raise an objection to orders or injunctions issued as part of compulsory enforcement or execution of attachment by way of litigation pursuant to section 771 of the Code of Civil Procedure (*Zivilprozessordnung*).

(2) ¹Entry in the refinancing register does not limit the objections and pleas of third parties with regard to the registered receivables and rights. ²If the assets entered in the refinancing register are separated from the insolvent's estate or are transferred to the entitled transferee or to a third party by the entitled transferee, all objections and pleas can be put forward in the same way as in the event of assignment. ³The provisions of section 1156 sentence 1 of the German Civil Code shall not apply. ⁴If assets entered in the refinancing register serve as collateral for other assets, the collateral provider can put forward all objections and pleas laid down in the contract containing the legal basis for the collateralisation vis-à-vis the entitled transferee. ⁵The provisions of section 1157 sentence 2 of the German Civil Code shall not apply. ⁶This is without prejudice to section 22d (4) in conjunction with section 22j (1) sentences 1 and 2, however.

(3) ¹The refinancing undertaking cannot offset any counterclaims against the entitled transferee's claims for transfer of assets properly entered in a refinancing register and cannot assert any rights of retention. ²Rights of avoidance on the part of its creditors pursuant to the Creditors' Avoidance of Transfers Act (*Anfechtungsgesetz*) and sections 129 to 147 of the Insolvency Code shall remain unaffected.

(4) The effects of sentences 1 to 3 do not prevent the refinancing undertaking, when selling the registered assets to the entitled transferee, from bearing the risk of their intrinsic value in whole or in part.

Section 22k

Cessation and transfer of register-keeping activities

(1) ¹If all of the entitled transferees entered in the refinancing register and, if the entitled transferee is a Pfandbrief bank or an insurance undertaking, the trustee of the Pfandbrief bank or the trustee of the insurance undertaking consent thereto, the keeping of the refinancing register may cease one month after BaFin has been notified thereof ²If all of the entitled transferees entered in a refinancing register and, if the entitled transferee is a Pfandbrief bank or an insurance undertaking, the trustee of the Pfandbrief bank or the trustee of the insurance undertaking consent thereto, the keeping of a register may be transferred under BaFin's supervision to a suitable credit institution provided that the registered assets are those of the credit institution taking over the register or the conditions set out in section 22b regarding the keeping of a refinancing register for third parties have been fulfilled.

2) ¹Furthermore, the keeping of the register shall cease if BaFin deems the register-keeping undertaking to be unsuitable for this activity. ²In this case, the keeping of the register shall be transferred under BaFin's supervision to a credit institution which BaFin deems to be suitable for this activity. ³The provisions of section 22b regarding the keeping of a refinancing register for third parties shall apply *mutatis mutandis*.

(3) Subsection (2) shall not apply if insolvency proceedings are initiated over the assets of an undertaking which keeps a refinancing register not only for third parties.

Section 22l

Appointment of a creditors' trustee upon the initiation of insolvency proceedings

(1) ¹If insolvency proceedings are initiated over the assets of an undertaking which keeps a refinancing register not only for third parties, the insolvency court, upon BaFin's application, shall appoint one or two natural persons proposed by BaFin as the creditors' trustee(s) of the refinancing register (the creditors' trustee(s)). ²The court may deviate from BaFin's proposal(s) if this appears necessary to ensure proper cooperation between the insolvency administrator and the creditors' trustee(s). ³The creditors' trustee shall receive a certificate of appointment, which he should return to the insolvency court at the end of his tenure.

(2) ¹BaFin shall submit an application pursuant to subsection (2) sentence 1 if, after consulting the entitled transferees, this appears necessary for the orderly management of the assets entered in the refinancing register. ²BaFin is to nominate the administrator of the refinancing register as the creditors' trustee of the refinancing register or, if the administrator is not available or permanently prevented from performing his tasks, the deputy administrator or another suitable natural person. ³The creditors' trustee of the refinancing register is to be dismissed at BaFin's request if there is good reason for doing so.

(3) ¹If it appears necessary to appoint a second creditors' trustee of the refinancing register to ensure the proper management of the assets entered in the refinancing register, BaFin, after consulting the transferees, can submit a further request pursuant to subsection (1)

sentence 1. ²If it submits such an application, it is to nominate the deputy administrator of the refinancing register or, if there is no deputy, another suitable natural person.

(4) ¹If a person other than the administrator is appointed as the creditors' trustee, the administrator's appointment shall expire. ²The creditors' trustee of the refinancing register shall take up this position. ³Sentences 1 and 2 shall apply *mutatis mutandis* to the deputy administrator.

Section 22m

Announcement of the appointment of a creditors' trustee

(1) ¹The insolvency court must publicly announce and inform the relevant court of registration about the appointment or dismissal of a creditors' trustee without delay. ²The appointment and dismissal of a creditors' trustee is to be entered officially in the Commercial Register following announcement. ³These entries are not publicly announced. ⁴The provisions of section 15 of the Commercial Code shall not apply.

(2) ¹If rights on the part of the register-keeping undertaking which are already entered in the land register (are entered in the refinancing register, then the appointment of a creditors' trustee shall be entered in the land register (*Grundbuch*) at the request of either the insolvency court or the creditors' trustee if the type of rights concerned and circumstances suggest that the transferees' interests could be at risk without such registration. ²Sentence 1 shall apply as appropriate to rights on the part of the register-keeping undertaking which are entered in the shipping register (*Schiffsregister*), the shipbuilding register (*Schiffsbauregister*) or the register of liens on aircraft (*Register für Pfandrechte an Luftfahrzeugen*).

Section 22n

Legal position of the creditors' trustee

(1) ¹The creditors' trustee shall be subject to supervision by the insolvency court. ²The insolvency court can ask the creditors' trustee in particular for information or a report on the situation and the management at any time. ³In addition, it shall be incumbent upon the creditors' trustee to perform the duties of an administrator. ⁴The creditors' trustee and the insolvency administrator must provide one another with all information which may be of significance for the insolvency proceedings over the assets of the register-keeping undertaking and for managing the assets entered in the refinancing register.

(2) ¹If the register-keeping undertaking was authorised to manage and dispose of the assets entered in the refinancing register, this right shall pass to the creditors' trustee. ²In consultation with the insolvency administrator, the creditors' trustee shall use all of the register-keeping undertaking's facilities that are required for the management of the registered assets.

(3) ¹If the register-keeping undertaking disposes of an asset entered in the refinancing register after the creditors' trustee has been appointed, this disposal shall be ineffective. ²The

provisions of sections 892 and 893 of the German Civil Code, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction (*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*) and sections 16 and 17 of the Act Governing Rights in Aircraft (*Gesetz über Rechte an Luftfahrzeugen*) shall remain unaffected. ³If the register-keeping undertaking disposes of an asset on the day on which the creditors' trustee of the refinancing register is appointed, it shall be assumed that the disposal occurred after the appointment.

(4) ¹In performing his management activities, the creditors' trustee of the refinancing register must exercise the diligence of a prudent and conscientious creditors' trustee. ²If the creditors' trustee of the refinancing register breaches his duties, the entitled transferees and the register-keeping undertaking can demand compensation for the damage resulting therefrom. ³This shall not apply if the creditors' trustee of the refinancing register is not responsible for the breach of duty.

(5) ¹The creditors' trustee of the refinancing register shall receive appropriate remuneration and reimbursement of his expenses from BaFin. ²The amounts paid are to be refunded separately to BaFin by the entitled transferees on a pro rata basis depending on the number of assets registered on their behalf and, at BaFin's request, shall be paid in advance. ³If the refinancing register is kept for third parties, these parties as well as the entitled transferees, as joint and several debtors, shall be obliged to make refunds and advance payments. ⁴Section 22i (2) and (3) sentence 1 shall apply *mutatis mutandis*. ⁵Section 22i (3) sentence 2 shall apply *mutatis mutandis* subject to the proviso that BaFin is to file an application for removal with the insolvency court.

Section 22o

Appointment of a creditors' trustee in the event of imminent insolvency

(1) ¹Under the conditions set out in section 46, upon BaFin's application, the court with jurisdiction at the register-keeping undertaking's domicile shall appoint one or two persons as the creditors' trustee(s). ²BaFin shall submit an application pursuant to sentence 1 if, after consulting the entitled transferees, this appears necessary for the orderly management of the assets entered in the refinancing register. ³In the event of imminent risk, this consultation shall be waived. ⁴In this case, the entitled transferees shall be consulted afterwards without delay.

(2) ¹The provisions of sections 22l to 22n shall apply with regard to the appointment and dismissal as well as the legal position of a creditors' trustee appointed under these circumstances, whereby the court with jurisdiction at the register-keeping undertaking's domicile shall take the place of the insolvency court. ²A good reason within the meaning of section 22l (2) sentence 3 shall be deemed to exist, in particular, if the conditions set out in section 46a are no longer applicable. ³In this case, BaFin is to appoint an administrator from among the creditors' trustees.

(3) ¹If insolvency proceedings are initiated over the assets of a register-keeping undertaking after a creditors' trustee has been appointed in accordance with subsections (3) and (2) then, for the period following the initiation of insolvency proceedings, the creditors' trustee shall be regarded as having been appointed by the insolvency court upon the initiation of insolvency proceedings. ²The insolvency court shall take the place of the court with jurisdiction at the register-keeping undertaking's domicile. ³The court with jurisdiction at the register-keeping undertaking's domicile must hand over to the insolvency court all documents in connection with the appointment and supervision of the creditors' trustee of the refinancing register.

Division 3 CUSTOMERS' RIGHTS

Section 22p (Repealed)

Division 4 ADVERTISING, AND INFORMATION REQUIREMENTS OF INSTITUTIONS

Section 23 Advertising

(1) To counteract misleading advertising by institutions, BaFin may prohibit certain kinds of advertising.

(2) Before general measures are taken under subsection (1), the central associations of the institutions and the consumer protection associations shall be consulted.

Section 23a Guarantee scheme

(1) ¹An institution which conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1, 4 or 10 or which provides financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 shall inform customers who are not institutions in its price list of its membership of a scheme designed to safeguard the claims of depositors and investors (guarantee scheme). ²In addition, the institution shall inform customers who are not institutions, in an easily comprehensible text form, prior to commencing a commercial relationship about the guarantee provisions, including the scope and amount of the guarantee. ³If deposits and other repayable funds are not guaranteed, the institution shall draw attention to this fact in its General Terms and Conditions, in its price list and in a prominent position in the contract documents before the commercial relationship commences, unless the repayable funds are securitised by mortgage bonds, municipal bonds or other debt securities which satisfy the conditions of Article 52 (4) sentences 1 and 2 of Directive 2009/65/EC. ⁴The information in the contract documents pursuant to sentence 3

shall not include any other statements, and must be signed separately by the customer. ⁵In addition, information must be available upon request on the terms and conditions of the guarantee scheme, including the requisite formalities for asserting compensation claims.

(2) If an institution withdraws from a guarantee scheme, it shall report this fact without delay in text form to its customers which are not institutions, to BaFin and to the Deutsche Bundesbank.

Division 5 SPECIAL DUTIES OF INSTITUTIONS, THEIR SENIOR MANAGERS, FINANCIAL HOLDING COMPANIES, MIXED-ACTIVITY FINANCIAL HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING COMPANIES

Section 24 Reports

(1) An institution shall report to BaFin and the Deutsche Bundesbank without delay

- 1 the intention to appoint a senior manager and to authorise a person to represent the institution in all aspects of its business, stating the facts which are germane to assessing his/her trustworthiness, professional qualifications and sufficient availability to exercise his/her respective tasks, as well as the realisation, withdrawal or change of that intention;
- 2 the retirement of a senior manager and the revocation of the authorisation to represent the institution in all aspects of its business;
- 3 changes in the legal form, unless authorisation is already required pursuant to section 32 (1), and changes in the firm name;
- 4 a loss amounting to 25% of eligible capital pursuant to Article 4 (1) number 71 of Regulation (EU) No 575/2013;
- 5 the relocation of the office or domicile;
- 6 the establishment, relocation and closure of a branch in a non-EEA state and the commencement and termination of the provision of cross-border services without establishing a branch;
- 7 the discontinuation of business operations;
- 8 the intention of its governing bodies appointed according to law and its articles of association to bring about a decision on the institution's liquidation;
- 9 a fall in the initial capital below the minimum requirements pursuant to section 33 (1) sentence 1 number 1, and the discontinuation of appropriate insurance cover pursuant to section 33 (1) sentences 2 and 3;
- 10 the acquisition or disposal of a major participating interest in its own institution, the reaching, exceeding or falling below the thresholds for participating interests of 20%,

- 30% and 50% of the voting rights or capital, and the fact that the institution becomes or ceases to be the subsidiary of another undertaking, as soon as the forthcoming change in these participatory relationships comes to the institution's attention;
- 11 each case in which the counterparty to a securities repurchase agreement, reverse repo, or a lending transaction in securities or commodities did not discharge his/her settlement obligations;
 - 12 the emergence of, change in or termination of a close link with another natural person or another undertaking;
 - 13 the emergence of, change in the level or termination of a qualifying participating interest in other undertakings;
 - 14 the submission of a draft recommendation pursuant to section 25a (5) sentence 6;
 - 14a the approval of a higher variable remuneration component pursuant to section 25a (5) sentence 5 stating the approved increase of the variable remuneration component in relation to the fixed remuneration component;
 - 15 the appointment of a member of the supervisory body, stating the facts which are germane to assessing his/her trustworthiness, professional expertise and sufficient availability to exercise his/her respective tasks;
 - 15a the retirement of a member of the supervisory body;
 - 16 a change in the ratio of balance sheet capital to the sum of total assets, off-balance-sheet liabilities and the replacement cost for claims arising from off-balance-sheet transactions (modified balance sheet capital ratio) of at least 5% based on the monthly return pursuant to section 25 (1) sentence 1 or the monthly balance sheet statistics pursuant to section 25 (1) sentence 3, in each case at the end of a quarter, in relation to the institution's approved annual accounts; where the institution prepares its accounts according to international accounting standards or is required to prepare interim accounts under the German Securities Trading Act, a corresponding change in the modified balance sheet capital ratio shall also be reported based on the interim accounts in relation to the approved annual accounts according to international accounting standards;
 - 17 loans
 - (a) to limited partners, to shareholders in a private or public limited company or in a limited partnership company, or to shareholders in a public institution if they own more than 25% of the capital (nominal capital, total amount of capital shares) of the institution, or if they hold more than 25% of the voting rights, if these have not been granted on market terms or if they are not adequately secured in line with banking practice, and
 - (b) to persons who have granted loans, insofar as these are not loans pursuant to letter (a), pursuant to Article 26 (1) letter (a) and Article 51 letter (a) of Regulation (EU) No 575/2013 as last amended, if these are more than 25% of the Tier 1 capital pursuant to Article 25 of Regulation (EU) No 575/2013 as last amended

without taking account of capital pursuant to Article 26 (1) letter (a) and Article 51 letter (a) of Regulation (EU) No 575/2013 as last amended, if these have not been granted on market terms or if they are not adequately secured in line with banking practice.

- (1a) An institution shall report to BaFin and the Deutsche Bundesbank annually
- 1 its close links with other natural persons or undertakings,
 - 2 its qualifying participating interests in other undertakings,
 - 3 the name and address of any holder of a major participating interest in the reporting institution and in the undertakings subordinated to it as described in section 10a that are domiciled abroad, as well as the amounts of these participating interests,
 - 4 the number of its domestic branches,
 - 5 the modified balance sheet capital ratio based on the approved annual accounts,
 - 6 the classification as a major institution pursuant to section 17 of the Remuneration Ordinance for Institutions (*Institutsvergütungsverordnung*) of 16 December 2013 (Federal Law Gazette I page 4270) as well as a change in this classification,
 - 7 if the institution is a CRR institution, the information that is required by the European Banking Authority to compare remuneration trends and practices within the meaning of Article 75 (1) of Directive 2013/36/EU in conjunction with Article 450 (1) letters (g) and (h) of the Regulation (EU) No 575/2013 as last amended, and
 - 8 if the institution is a CRR institution, the information pertaining to senior managers and members of staff that earn total annual remuneration of at least €1 million within the meaning of Article 75 (1) of Directive 2013/36/EU in conjunction with Article 450 (1) letter (i) of the Regulation (EU) No 575/2013 as last amended that the European Banking Authority requires for publishing aggregate information.

(1b) ¹When reporting a loan pursuant to subsection (1) number 17, the institution must state the collateral provided and the terms of the loan. ²Such loans which it has reported pursuant to subsection (1) number 17 shall be reported once again to BaFin and the Deutsche Bundesbank without delay if the collateral provided or the terms of the loans are contractually altered, together with the corresponding alterations. ³BaFin may require institutions to submit to itself and to the Deutsche Bundesbank every five years a summary report of the loans to be reported pursuant to subsection (1) number 17.

(2) An institution intending to merge with another institution within the meaning of this Act or with an e-money institution or a payment institution within the meaning of the Payment Services Oversight Act shall report this fact to BaFin and the Deutsche Bundesbank without delay.

(2a) A member of a supervisory body of a CRR institution that is of major importance within the meaning of section 25d (3) sentence 7, of a financial holding company or a mixed financial holding company shall inform BaFin and the Deutsche Bundesbank without delay

about the commencement and termination of activities as a senior manager or member of the supervisory board of another undertaking.

(3) ¹A senior manager of an institution and the persons who actually manage the business of a financial holding company or a mixed financial holding company shall report to BaFin and the Deutsche Bundesbank without delay

- 1 the commencement and termination of activities as a senior manager or member of the supervisory board of another undertaking, and
- 2 the acquisition and disposal of a direct participating interest in an undertaking, as well as any changes in the amount of such a participating interest.

²A direct participating interest within the meaning of sentence 1 number 2 shall be deemed to be the holding of at least 25% of the undertaking's capital.

(3a) ¹A financial holding company shall report to BaFin and the Deutsche Bundesbank without delay

- 1 the intention to appoint a person who is actually to manage the business of the financial holding company, stating the facts which are germane to assessing his/her trustworthiness, professional qualifications and sufficient availability to exercise his/her respective tasks, as well as the realisation of that intention;
- 2 the retirement of any person who has actually managed the business of the financial holding company;
- 3 changes to the structure of the financial holding group which mean that the group will, in future, be active across sectors;
- 4 the appointment of a member of the supervisory body, stating the facts which are germane to assessing his/her trustworthiness, professional expertise and sufficient availability to exercise his/her respective tasks;
- 5 the retirement of a member of the supervisory body.

²A financial holding company shall submit to BaFin and the Deutsche Bundesbank annually a summary report of those institutions, German asset management companies, financial undertakings, ancillary service providers and payment institutions within the meaning of the Payment Services Oversight Act, that are subordinated undertakings within the meaning of section 10a. ³BaFin will transmit a list of these to the competent agencies of the other EEA states, the European Banking Authority and the European Commission pursuant to sentence 1. ⁴The establishment, modification or discontinuation of such participating interests or corporate relationships shall be reported to BaFin and the Deutsche Bundesbank without delay. ⁵Sentence 1 numbers 1 and 2 in respect of the persons who actually manage the business of this undertaking, sentence 1 numbers 4 and 5 in respect of members of the supervisory body of this undertaking as well as sentences 2 to 4 shall apply *mutatis mutandis* to mixed financial holding companies.

(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.

(4) ¹The Federal Ministry of Finance, acting in consultation with the Deutsche Bundesbank, may issue by way of a statutory order more detailed provisions on the nature, scope, timing and form of the reports and on the submission of the documentation provided for in this Act, as well as on the permissible data carriers, transmission channels and data formats, and may supplement the existing reporting requirements by the obligation to submit summary reports and summary lists, insofar as this is necessary for the performance of BaFin's tasks and especially to enable it to obtain consistent records for assessing the banking business conducted and financial services provided by institutions. ²It may delegate this authority by way of a statutory order to BaFin, provided that statutory orders of BaFin are issued in agreement with the Deutsche Bundesbank. ³The central associations of the institutions shall be consulted before the statutory order is issued.

Section 24a

Establishment of a branch and provision of cross-border services in other EEA states

(1) ¹A CRR credit institution or securities trading firm shall report the intention to establish a branch in another EEA state to BaFin and the Deutsche Bundesbank without delay pursuant to sentence 2. ²The report shall contain the following particulars

- 1 the member state in which the branch is to be established,
- 2 a business plan indicating the nature of the planned business and the organisational structure of the branch and any intention to use tied agents,
- 3 the address from which the institution's records can be requested in the host member state and to which documents can be delivered, and
- 4 the names of the managers of the branch.

(2) ¹If there is no reason to doubt the suitability of the institution's organisational structure and financial standing, BaFin will forward the particulars pursuant to subsection (1) sentence 2 to the competent authorities of the host member state within two months of receiving the complete documentation and will inform the reporting institution of this. ²BaFin will also inform the competent authorities of the host member state about the amount of own funds and the adequacy of own funds and, if applicable, about the deposit guarantee scheme or investor compensation scheme to which the institution belongs or about its comparable protection arrangements within the meaning of section 23a (1) sentence 1. ³If BaFin does not forward the particulars pursuant to subsection (1) sentence 2 to the competent authorities of the host member state, it will notify the institution of its reasons for not doing so within two months of receiving all the particulars pursuant to subsection (1) sentence 2. ⁴After the report

has been forwarded to the competent authorities of the host member state, the institution may take up activities in the other state after receiving a corresponding notification from these authorities or after the expiry of a two-month period at the latest.

(3) ¹Subsection (1) sentence 1 shall apply *mutatis mutandis* to the intention to conduct banking business, to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1, 1a, 1c, 2 to 4, 9 and 10 or sentence 3 or to engage in activities pursuant to section 1 (3) sentence 1 numbers 2 to 8 or to provide credit reports or offer to rent out safe deposit boxes or, in the case of CRR credit institutions, payment services within the meaning of the Payment Services Oversight Act in another EEA state by way of cross-border services. ²The report shall specify the state in which the cross-border service is to be provided and shall contain a business plan specifying the intended activities and whether tied agents are to be used in this state. ³If there is no reason to doubt the suitability of the institution's organisational structure and financial situation, BaFin will notify the competent authorities of the host member state within one month of receiving the report. ⁴The institution must wait until the competent authorities of the host member state have been notified within this period before it takes up activities in the other state. ⁵Otherwise, BaFin will inform the institution without delay of its non-notification and its reasons for such non-notification.

(3a) ¹If the operator of a multilateral trading system intends to grant trading participants in other states direct access to its trading system, it shall notify BaFin if this is the first time a trading participant in the country in question has been granted access. ²BaFin will notify the competent authorities of the host member state of such intention within one month of receiving the report. ³Upon request, the operator shall provide BaFin with the names of the trading participants from this state. ⁴At the request of the competent authorities of the host member state, BaFin will disclose this information within a reasonable period of time.

(3b) ¹If a financial services institution within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 intends to use tied agents for an activity within the meaning of subsection (3), BaFin will, at the request of the competent authorities of the host member state, inform them, within a reasonable period of time, of the name or the names of the tied agents which the institution in this state intends to use. ²Sentence 1 shall apply *mutatis mutandis* to the request of a host member state that it be advised of the names of the members of or participants in a domestically domiciled multilateral trading system which intends to provide such systems in this host member state.

(3c) ¹Subsections (1) to (3) shall apply *mutatis mutandis* to financial services institutions that engage in factoring within the meaning of section 1 (1a) sentence 2 number 9 or finance leasing within the meaning of section 1 (1a) sentence 2 number 10 and that intend to establish a branch or provide cross-border services in other EEA states, provided that the conditions contained in section 53b (7) sentence 1 numbers 1 to 7 are met. ²Subsection (2) sentence 2 shall apply with the proviso that the competent authority of the host member state is informed about the amount and composition of the financial services institution's own funds and the total risk exposure amounts calculated pursuant to Article 92 (3) and (4) of Regulation (EU) No 575/2013 of the credit institution which is its parent undertaking.

(4) ¹If changes occur in the circumstances reported pursuant to subsection (1) sentence 2 or subsection (3) sentence 2, the institution shall notify BaFin, the Deutsche Bundesbank and the competent authorities of the host member state of these changes in writing at least one month before the changes become effective. ²The notification requirement pursuant to sentence 1 shall apply *mutatis mutandis* to an institution which has established its branch in another EEA state prior to the date on which it comes under the obligation to submit a report pursuant to subsection (1). ³An institution which has established a branch pursuant to subsection (1) shall report any changes in the situation regarding the deposit guarantee scheme or investor compensation scheme or the comparable protection arrangements within the meaning of section 23a (1) sentence 1 to BaFin, the Deutsche Bundesbank and the competent authorities of the host member state at least one month before the changes become effective. ⁴BaFin will inform the competent authorities of the host member state of the changes pursuant to sentence 3.

(5) The Federal Ministry of Finance will be authorised, by way of a statutory order, to lay down whether subsections (1), (2) and (4) shall apply *mutatis mutandis* to the use of a tied agent that is domiciled or habitually resident in another EEA state and that subsections (2) and (4) shall apply *mutatis mutandis* to the establishment of a branch in a non-EEA state, insofar as this is necessary in the context of the right of establishment under agreements of the European Union with non-EEA states.

(6) (Repealed)

Section 24b

Participation in payment and securities transfer and settlement systems as well as interoperable systems

(1) ¹An institution shall report the intention to operate a system pursuant to section 1 (16) to BaFin and the Deutsche Bundesbank without delay and shall name the participants. ²This also applies to any subsequent change in the group of participants and to agreements on the operation of interoperable systems. ³The Deutsche Bundesbank will notify the European Securities and Markets Authority of the systems reported to it after having satisfied itself of the appropriateness of the rules governing the system. ⁴In the case of an agreement on the operation of interoperable systems, the Deutsche Bundesbank will verify whether the rules of the systems involved concerning the timing of submission and the irrevocability of orders are compatible.

(2) The institution shall provide information on the systems within the meaning of subsection (1) in which it is involved and on the basic rules governing their mode of operation to all parties which can demonstrate that they have a legitimate interest in the matter.

(3) ¹An institution that operates a system pursuant to section 1 (16) shall grant CRR credit institutions domiciled in another EEA state equal access to the system according to the same transparent and objective criteria as apply to domestic participants in this system. ²This is without prejudice to the institution's right to deny access for justified commercial reasons.

(4) The Federal Ministry of Finance will be authorised to issue a statutory order in consultation with the Deutsche Bundesbank regulating the details of the reporting requirements, notification of the European Securities and Markets Authority pursuant to subsection (1), the right to information pursuant to subsection (2) and the right to access pursuant to subsection (3).

(5) Subsections (1) to (4) shall apply *mutatis mutandis* to system operators which are not an institution.

Section 24c

Automated access to account details

(1) ¹Credit institutions shall maintain a data file in which they must store the following data without delay

- 1 the number of any account which is subject to the obligation to verify proof of identity within the meaning of section 154 (2) sentence 1 of the Fiscal Code or of a safe custody account, as well as the dates on which the account was opened and closed,
- 2 the name – and for natural persons the date of birth – of the holder and of any party authorised to draw on the account, as well as – in the cases specified in section 3 (1) number 3 of the Money Laundering Act – the name and, if available, the address of any other economic beneficiary within the meaning of section 1 (6) of the Money Laundering Act.

²A new data record shall be created without delay for each change in the data entered pursuant to sentence 1. ³The data shall be deleted three years after the account or safe custody account has been closed. ⁴In the case of sentence 2 the previous data record shall be deleted three years after the new data record has been created. ⁵The credit institution shall ensure that BaFin has automated access at all times to the data entered in the data file pursuant to sentence 1 by means of a procedure of BaFin's choice. ⁶The institution shall ensure by means of technical and organisational measures that it cannot monitor such data retrievals.

(2) BaFin may access individual data entered in the data file pursuant to subsection (1) sentence 1 insofar as this is necessary to enable it to perform its prudential functions under this Act or the Money Laundering Act, in particular with respect to unauthorised banking business and financial services or the misuse of the institutions by means of money laundering or fraudulent activities to the detriment of the institutions, and if there is particular urgency in individual cases.

(3) ¹Upon request, BaFin will provide information entered in the data file pursuant to subsection (1) sentence 1 to

- 1 the supervisory authorities pursuant to section 9 (1) sentence 4 number 2 insofar as this is necessary to enable them to perform their prudential functions under the conditions set out in subsection (2),
- 2 the authorities or courts responsible for providing international judicial assistance in criminal cases, and otherwise for the prosecution and punishment of criminal offences, insofar as this is necessary to enable them to perform their statutory functions,
- 3 the national authority responsible for imposing restrictions on capital transfers and payment transactions pursuant to the Foreign Trade and Payments Act insofar as this is necessary to enable it to perform its functions ensuing from the Foreign Trade and Payments Act or from legal instruments of the European Union in connection with restrictions on economic and financial relations.

²BaFin will access the data stored in the data files by means of an automated procedure and transmit them to the authority making the request. ³BaFin will verify the permissibility of such transmission only if it has particular grounds for doing so. ⁴The responsibility for the permissibility of the transmission shall lie with the authority making the request. ⁵BaFin may, pursuant to section 4b of the Federal Data Protection Act, provide foreign agencies with information from the data file pursuant to subsection (1) sentence 1 for the purposes described in sentence 1. ⁶Section 9 (1) sentences 5 and 6 and subsection (2) shall apply *mutatis mutandis*. ⁷This is without prejudice to the provisions on international judicial assistance in criminal matters.

(4) ¹For the purpose of monitoring compliance with data protection rules on the part of the competent agency, BaFin will log the time of each data retrieval, the data used during the retrieval, the data retrieved, the name of the retriever, the reference number and, if the data are retrieved at the request of another agency, the name of that agency and its reference number. ²The log data may not be used for any other purposes. ³The log data will be kept for at least 18 months and will be deleted after two years at the latest.

(5) ¹The credit institution shall put in place, at its own expense, all the measures necessary for the automated data access in its area of responsibility. ²These include, in each case in accordance with the relevant BaFin provisions, the procurement of the equipment necessary to ensure confidentiality and protection against unauthorised access, the installation of a suitable telecommunications link and participation in the closed user system, as well as the ongoing provision of these facilities.

(6) ¹The credit institution and BaFin shall put in place state-of-the-art measures to safeguard data protection and data security, which in particular shall guarantee the confidentiality and integrity of the retrieved and transmitted data. ²The state of the art will be defined by BaFin in consultation with the Federal Office for Information Security (*Bundesamt für Sicherheit in der Informationstechnik*) by a procedure of BaFin's choice.

(7) ¹The Federal Ministry of Finance may, by way of a statutory order, permit exemptions from the obligation to transmit data by means of an automated procedure. ²It may delegate this authority to BaFin by way of a statutory order.

(8) Insofar as the Deutsche Bundesbank and the Federal Republic of Germany – Finance Agency (*Bundesrepublik Deutschland – Finanzagentur GmbH*) maintain accounts and safe custody accounts for third parties, they will be deemed to be credit institutions within the meaning of subsections (1), (5) and (6).

Section 25

Financial information, information on internal capital adequacy; authority to issue orders

(1) ¹Institutions shall report information on their financial situation (financial information) to the Deutsche Bundesbank without delay after the end of each quarter. ²In addition, credit institutions shall report information on their internal capital adequacy pursuant to section 25a (1) sentence 3 and on the procedures pursuant to section 25a (1) sentence 3 number 2 (internal capital adequacy information) to the Deutsche Bundesbank without delay once a year on a date specified by BaFin. ³BaFin may shorten the reporting period pursuant to sentences 1 and 2 for an institution insofar as this is necessary for the fulfilment of BaFin's tasks. ⁴The Deutsche Bundesbank shall forward the information pursuant to sentences 1 and 2 to BaFin along with its comments; BaFin may waive the forwarding of certain information pursuant to sentences 1 and 2.

(2) ¹Superordinated undertakings within the meaning of section 10a shall also submit consolidated financial information to the Deutsche Bundesbank without delay after the end of each quarter. ²If the group within the meaning of section 10a (1) includes a credit institution domiciled in Germany, superordinated undertakings within the meaning of section 10a shall also report consolidated group internal capital adequacy information to the Deutsche Bundesbank without delay once a year on a date specified by BaFin. ³BaFin may shorten the reporting period pursuant to sentences 1 and 2 for a subordinated undertaking insofar as this is necessary for the fulfilment of BaFin's tasks. ⁴Subsection (1) sentence 4 and section 10a (4) and (5) on the consolidation methodology, section 10a (10) on the subconsolidation of subsidiaries in non-EEA states and Article 11 (1) of Regulation (EU) No 575/2013 on the duty to provide information shall apply *mutatis mutandis* to the information pursuant to sentences 1 and 2. ⁵In addition, section 25a (3) shall apply *mutatis mutandis* to the information pursuant to sentence 2.

(3) ¹The Federal Ministry of Finance shall be authorised to issue by way of a statutory order that does not require the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more detailed provisions on the nature and scope and on the permissible data storage media, transmission channels and data formats of the financial information and the internal capital adequacy information, in particular to gain an insight into developments in institutions' assets and liabilities position and profitability as well as into developments in the risk situation and risk management procedures of credit institutions, on additional information

as well as on a shortening of the reporting period pursuant to subsection (1) sentence 3 or subsection (2) sentence 3 for certain types or groups of institutions insofar as this is necessary to enable BaFin to perform its functions. ²The information may also relate to subordinated undertakings within the meaning of section 10a, to subsidiaries domiciled in or outside Germany which are not included in supervision on a consolidated basis and to mixed-activity holding companies with subordinated institutions; the mixed-activity holding companies shall transmit the requisite data to the institutions. ³The Federal Ministry of Finance may delegate the authority to issue a statutory order to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank.

Section 25a

Particular organisational duties; authority to issue orders

(1) ¹An institution shall have in place a proper business organisation which ensures compliance with the legal provisions to be observed by the institution as well as business requirements. ²The management board is responsible for ensuring the institution's proper business organisation; it shall take the necessary measures to formulate the applicable internal guidelines except where such decisions are taken by the supervisory board. ³A 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,

- 1 the definition of strategies, in particular the definition of a business strategy geared to the institution's sustainable development and a risk strategy that is consistent therewith, as well as the establishment of processes for planning, implementing, assessing and adjusting the strategies;
- 2 processes for determining and safeguarding internal capital adequacy, which shall be based on a conservative determination of risks and of the available financial resources to cover them;
- 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,
 - (a) rules on the organisational and operational structure that include a clear delineation of competencies,
 - (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 Sub-Section 2 of Directive 2013/36/EU, and
 - (c) a risk control function and a compliance function;
- 4 adequate staffing and technical and organisational resources;
- 5 the definition of an adequate contingency plan, especially for IT systems, and

- 6 suitable and transparent remuneration systems for both management board members and employees geared to the institution's sustainable development, paying due regard to subsection (5); this shall not apply if remuneration has been regulated in a collective agreement or, within its scope of application, in an agreement between the social partners applying the provisions of the collective agreement or, on the basis of a collective agreement, in a plant-level or service agreement.

⁴Risk management shall be geared to the nature, scope, complexity and riskiness of the institution's business activities ⁵The institution shall regularly review the appropriateness and effectiveness of its risk management. ⁶A proper business organisation shall additionally comprise

- 1 appropriate rules by means of which the institution's financial situation can be gauged with sufficient accuracy at all times;
- 2 complete documentation of business operations permitting seamless monitoring by BaFin for its area of responsibility; requisite records shall be retained for at least five years; this is without prejudice to section 257 (4) of the Commercial Code; section 257 (3) and (5) of the Commercial Code shall apply *mutatis mutandis*;
- 3 a procedure which enables employees, whilst ensuring that their identity is kept confidential, to report to competent agencies breaches of Regulation (EU) No 575/2013 or of this Act or of statutory orders issued on the basis of this Act as well as any criminal actions committed within the undertaking.

(2) ¹BaFin may lay down provisions on the modelling of a sudden and unexpected change in interest rates and on the methodology for computing the impact on the present value of the interest rate risk arising from non-trading book business. ²In individual cases, BaFin may issue to an institution orders that are appropriate and necessary for ensuring a proper business organisation within the meaning of subsection (1) sentences 3 and 6 and for ensuring compliance with the provisions of sentence 1.

(3) ¹Subsections (1) and (2) shall apply *mutatis mutandis* to groups of institutions, financial holding groups and mixed financial holding groups as well as to institutions within the meaning of Article 4 of Regulation (EU) No 575/2013 subject to the proviso that the senior managers of the superordinated undertaking are responsible for the proper business organisation of the group of institutions, financial holding group or mixed financial holding group. ²A group within the meaning of sentence 1 shall also include subsidiaries of a superordinated undertaking or of a subordinated subsidiary of a group of institutions, financial holding group or mixed financial holding group which is not subject to either Regulation (EU) No 575/2013 or section 1a. ³The obligations resulting from inclusion in risk management at group level shall be fulfilled by group subsidiaries which are domiciled in a non-EEA state only insofar as these obligations do not conflict with applicable the law in the subsidiary's home state.

(4) (Repealed)

(5) ¹Institutions shall set appropriate ratios between the variable and fixed annual remuneration components for employees and management board members. ²In the absence of a decision pursuant to sentence 5, the variable remuneration component shall not exceed 100% of the fixed remuneration component for each individual employee or management board member. ³Institutions may discount the future value of up to 25% of the variable remuneration component to the point in time when the respective employees or management board members are notified of the amount of the variable remuneration component for an assessment period, provided that this part of the variable remuneration component is paid in the form of instruments which are deferred for at least five years after this notification is given. ⁴In cases of deferral, an entitlement and expectant right to this part of the variable remuneration component shall vest only after the deferral period has elapsed, and during the deferral period individuals shall solely have an entitlement to correct calculation of the unvested portion of this part of the variable remuneration component and not to this part of the variable remuneration component itself. ⁵The shareholders, proprietors or members of the institution may decide whether to approve a higher variable remuneration component than that stipulated in sentence 2; this higher remuneration component shall not exceed 200% of the fixed remuneration component for each individual employee or management board member. ⁶To seek approval of a higher variable remuneration component for employees than that stipulated in sentence 2 the management board and the supervisory board, and to seek approval of a higher variable remuneration component for members of the management board than that stipulated in sentence 2 the supervisory board only, shall submit a recommendation; the recommendation shall specify the reasons for the requested approval of a higher variable remuneration component than that stipulated in sentence 2 and its scope, including the number of employees and management board members affected together with their functions, as well as the expected impact of a higher variable remuneration component than that stipulated in sentence 2 on the requirement to maintain an adequate capital base. ⁷The shareholders, owners or members of the institution shall be given sufficient notice of the recommendation to enable them to gather adequate information; where the shareholders, owners or members exercise their rights in the context of a meeting, the recommendation shall be disclosed when notice of the meeting is given. ⁸The decision shall be approved by a majority of at least 66% of the votes submitted, provided that at least 50% of the voting rights are represented when the decision is taken, or by a majority of at least 75% of the votes submitted. ⁹Shareholders, owners or members who, as employees or management board members, would benefit from a higher variable remuneration component than that stipulated in sentence 2 shall not be permitted to exercise their voting rights either directly or indirectly.

(6) ¹The Federal Ministry of Finance shall be authorised to issue by way of a statutory order that does not require the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more detailed provisions on

- 1 the structure of the remuneration systems pursuant to subsection (1) sentence 3 number 6, including the structure of
 - (a) the decision-making processes and competencies,

- (b) the ratio between the variable and fixed remuneration components and of the remuneration instruments for the variable remuneration component,
- (c) positive and negative remuneration parameters, performance periods and deferral periods, including the criteria and parameters for a complete loss or partial reduction of the variable remuneration component, and

of the manner of taking account of the institution-specific and group-wide business and remuneration strategy, including its application and implementation in undertakings belonging to the group, and of the institution's objectives, values and long-term interests,

- 2 the discount factors for calculating the present value of the variable remuneration component prior to computing the ratio pursuant to subsection (5) sentences 2 to 4,
- 3 the institution's monitoring of the appropriateness and transparency of the remuneration systems and their ongoing refinement, also involving the remuneration committee and a remuneration officer,
- 4 disclosure of the structure of the remuneration systems and the component parts of the remuneration package, including the total amount of guaranteed bonus payments and individual contractual severance payments, stating the highest severance payment made and the number of beneficiaries, and
- 5 the disclosure medium and frequency of disclosure within the meaning of number 4.

²The rules shall be geared, in particular, to the institution's size and remuneration structure as well as to the nature, scope, complexity, riskiness and internationality of its business activities. ³The provisions pursuant to sentence 1 number 4 shall be without prejudice to the commercial law provisions relating to the disclosure of remuneration pursuant to section 340a (1) and (2) in conjunction with section 340l (1) sentence 1 of the Commercial Code. ⁴The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ⁵The central associations representing the institutions shall be consulted before the statutory order is issued.

Section 25b

Outsourcing of activities and processes

(1) ¹An institution shall, depending on the nature, scope, complexity and riskiness of outsourcing to another undertaking activities and processes that are material to the execution of banking business, financial services or any of an institution's other usual services, make appropriate arrangements in order to avoid incurring excessive additional risks. ²Outsourcing shall impair neither the proper execution of such business and services nor the business organisation within the meaning of section 25a (1). ³In particular, the institution shall ensure ongoing appropriate and effective risk management that includes the outsourced activities and processes.

(2) ¹Outsourcing shall not entail the delegation of management board responsibility to the external service provider. ²In the event of outsourcing, the institution shall remain responsible for ensuring compliance with the legal provisions to be observed by the institution.

(3) ¹Outsourcing shall not prevent BaFin from performing its tasks; its right to request information, right to review and ability to supervise shall be ensured by means of suitable arrangements with regard to the outsourced activities and processes, including in the event of outsourcing to an undertaking domiciled in another EEA state or in a non-EEA state. ²This shall apply *mutatis mutandis* to the performance of the tasks of the institution's auditors. ³Outsourcing shall require a written agreement which lays down the institution's rights to ensure compliance with the aforementioned stipulations, including the right to give instructions and the right to give notice, as well as the corresponding duties on the part of the external service provider.

(4) ¹If BaFin's right to review and ability to supervise are impaired in connection with outsourcing, BaFin may, in individual cases, issue orders that are appropriate and necessary to eliminate this impairment. ²This is without prejudice to BaFin's powers pursuant to section 25a (2) sentence 2.

Section 25c

Management board members

(1) ¹The management board members of an institution shall have the necessary professional qualifications, be trustworthy and dedicate sufficient time to performing their functions. ²A prerequisite for the professional qualifications of management board members is that they have adequate theoretical and practical knowledge of the business concerned, as well as managerial experience. ³A person shall normally be assumed to have the necessary professional qualifications if he/she can demonstrate three years' managerial experience at an institution of comparable size and type of business.

(2) ¹The number of directorships which may be held by a member of the management board at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. ²The following persons may not be members of the management board of a CRR institution which is significant within the meaning of sentence 6:

- 1 members of the supervisory board of the same undertaking or
- 2 members of the management board of another undertaking or persons who are already a supervisory board member of more than two undertakings.

³Within the meaning of sentence 1 number 2, several directorships count as one directorship if the directorships are carried out at undertakings

- 1 which belong to the same group of institutions, financial holding group or mixed financial holding group,

- 2 which are members of the same institutional protection scheme, or
- 3 in which the institution has a significant holding.

⁴Directorships at organisations and undertakings which do not pursue predominantly commercial objectives, in particular undertakings which provide public services, are not included in the maximum number of directorships pursuant to sentence 1 number 2. ⁵Taking into account the specific circumstances and the nature, scope and complexity of the activities of the institution, group of institutions, financial holding group, financial holding company or mixed financial holding company, BaFin may permit a management board member to hold an additional directorship on a supervisory board provided that this does not prevent the member from devoting sufficient time to performing his/her functions in the undertaking in question. ⁶An institution is significant within the meaning of sentence 2 if its total assets equal or exceed €15 billion on average over the reporting dates of the preceding three completed financial years; the following institutions are always deemed to be significant:

- 1 institutions which, pursuant to Article 6 (4) of 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 (OJ L 287/63 of 29 October 2013), are supervised by the European Central Bank,
- 2 institutions categorised as having the potential to pose a systemic threat within the meaning of section 47 (1), and
- 3 financial trading institutions within the meaning of section 25f (1).

(3) As part of their overall responsibility to ensure a proper business organisation, the management board shall

- 1 decide upon principles of proper governance which ensure the necessary diligence in the governance of the institution and, in particular, establish a segregation of duties in the organisation and measures to prevent conflicts of interest, as well as ensuring that these principles are implemented.
- 2 monitor and periodically assess the effectiveness of the principles established and implemented pursuant to number 1; the management board members shall take appropriate steps to address any deficiencies;
- 3 devote sufficient time to establishing strategies and to risks, in particular counterparty and credit risk, market risk and operational risk;
- 4 ensure an adequate and transparent business structure which is geared to the strategies of the undertaking and takes account of the transparency in the institution's business activities which is needed to ensure effective risk management, and have the necessary knowledge of the business structure and of the associated risks to achieve this; for management board members of a superordinated undertaking this obligation also applies to the group pursuant to section 25a (3);
- 5 ensure the accuracy of accounting and financial reporting, including the necessary controls and compliance with the law and relevant standards; and

6 oversee the processes with regard to disclosure and communications.

(4) Institutions shall devote adequate human and financial resources to easing the induction of management board members and facilitating such training as is necessary to ensure that they remain qualified for the position.

(4a) As part of its overall responsibility to ensure a proper business organisation of the institution pursuant to section 25a (1) sentence 2, the management board of an institution shall ensure that the institution has in place the following strategies, processes, procedures, functions and frameworks:

- 1 a business strategy geared to the institution's sustainable development and a risk strategy that is consistent therewith, as well as processes for planning, implementing, assessing and adjusting the strategies pursuant to section 25a (1) sentence 3 number 1; as a minimum, the management board shall ensure that
 - (a) the overall objective, the objectives of the institution for each material business activity and the measures to achieve these objectives are documented at all times;
 - (b) the risk strategy covers at all times the objectives of the risk management of material business activities and the measures to achieve these objectives;
- 2 processes for determining and safeguarding internal capital adequacy pursuant to section 25a (1) sentence 3 number 2; as a minimum, the management board shall ensure that
 - (a) the institution's material risks, in particular counterparty and credit risk, market risk, liquidity risk and operational risk, are identified and defined regularly and on an *ad hoc* basis in the context of a risk inventory (overall risk profile);
 - (b) in the context of the risk inventory, risk concentrations are taken into account and possible material impairments of the financial position, financial performance or liquidity position are monitored;
- 3 internal control mechanisms consisting of an internal control system and an internal audit function pursuant to section 25a (1) sentence 3 number 3 letters (a) to (c); as a minimum, the management board shall ensure that
 - (a) in the context of the organisational and operational structure, lines of responsibility are clearly segregated, whereby material processes and related tasks, competencies, responsibilities, controls and reporting channels shall be clearly defined and it shall be ensured that employees do not perform activities which are incompatible with one another;
 - (b) there is a general segregation between the unit which initiates credit transactions and has a vote in credit decisions (front office) as well as the trading unit, on the one hand, and the unit which has an additional vote in credit decisions (back

- office), and the risk control functions and functions serving to settle and monitor trading, on the other hand;
- (c) the internal control system encompasses risk management and risk control processes to identify, assess, manage, monitor and report the material risks and associated risk concentrations as well as a risk control function and a compliance function;
 - (d) the management board is informed of the risk situation, including a risk assessment, at appropriate intervals and at least once a quarter;
 - (e) the management board informs the supervisory board of the risk situation, including a risk assessment, at appropriate intervals and at least once a quarter;
 - (f) appropriate stress tests are regularly performed for the material risks and the overall risk profile of the institution, and a possible need for action is considered on the basis of the results;
 - (g) the internal audit function reports to the management board and the supervisory board at appropriate intervals and at least once a quarter;
- 4 adequate staffing and technical and organisational resources at the institution pursuant to section 25a (1) sentence 3 number 4; as a minimum, the management board shall ensure that the quantity and quality of the institution's staffing and the scope and quality of its technical and organisational resources are commensurate with its internal operational needs, business activities and risk situation;
- 5 adequate contingency plans pursuant to section 25a (1) sentence 3 number 5 for contingencies affecting time-critical activities and processes; as a minimum, the management board shall ensure that regular contingency tests are carried out in order to verify the suitability and effectiveness of the contingency plan and the results are communicated to the respective responsible staff;
- 6 as a minimum, where activities and processes are outsourced to another undertaking pursuant to section 25b (1) sentence 1, appropriate processes and frameworks to avoid incurring excessive additional risks or impairing either the proper execution of business and services or the business organisation within the meaning of section 25a (1).

(4b) ¹For groups of institutions, financial holding groups and mixed financial holding groups as well as institutions within the meaning of Article 4 of Regulation (EU) No 575/2013, the management board of the superordinated undertaking shall be responsible for compliance with due diligence obligations within the group of institutions, financial holding group, mixed financial holding group or institutions within the meaning of Article 4 of Regulation (EU) No 575/2013 if the superordinated undertaking is the parent undertaking which exercises a dominant influence within the meaning of section 290 (2) of the Commercial Code over other undertakings in the group without this being dependent on the legal form of the parent undertaking. ²As part of its overall responsibility to ensure a proper business organisation of the group pursuant to sentence 1, the management board of the superordinated undertaking

shall ensure that the group has in place the following strategies, processes, procedures, functions and frameworks:

- 1 a group-wide business strategy geared to the group's sustainable development and a group-wide risk strategy that is consistent therewith, as well as processes for planning, implementing, assessing and adjusting the strategies pursuant to section 25a (1) sentence 3 number 1; as a minimum, the management board shall ensure that
 - (a) the group's overall objective, the group's objectives for each material business activity and the measures to achieve these objectives are documented at all times;
 - (b) the group's risk strategy includes at all times the risk management objectives for the material business activities and the measures to achieve these objectives;
 - (c) the strategic orientation of the undertakings belonging to the group is aligned with the group-wide business and risk strategies;
- 2 processes for determining and safeguarding the group's internal capital adequacy pursuant to section 25a (1) sentence 3 number 2; as a minimum, the management board shall ensure that
 - (a) the group's material risks, in particular counterparty and credit risk, market risk, liquidity risk and operational risk, are identified and defined regularly and on an *ad hoc* basis in the context of a risk inventory (overall risk profile of the group);
 - (b) in the context of the risk inventory, risk concentrations within the group are taken into account and possible material impairments of the group's financial position, financial performance or liquidity position are monitored;
- 3 internal control mechanisms consisting of an internal control system and an internal audit function pursuant to section 25a (1) sentence 3 number 3 letters a to c; as a minimum, the management board shall ensure that
 - (a) in the context of the group's organisational and operational structure, lines of responsibility are clearly segregated, whereby material processes and related tasks, competencies, responsibilities, controls and reporting channels within the group shall be clearly defined and it shall be ensured that employees do not perform activities which are incompatible with one another;
 - (b) at the undertakings belonging to the group, there is a general segregation between the unit which initiates credit transactions and has a vote in credit decisions (front office) as well as the trading unit, on the one hand, and the unit which has an additional vote in credit decisions (back office), and the risk control functions and functions serving to settle and monitor trading, on the other hand;
 - (c) the management board is informed of the risk situation, including a risk assessment, at appropriate intervals and at least once a quarter;

- (d) at group level, the management board informs the supervisory board of the group's risk situation, including a risk assessment, at appropriate intervals and at least once a quarter;
 - (e) the group's internal control system encompasses a risk control function and a compliance function as well as risk management and risk control processes to identify, assess, manage, monitor and report the material risks and associated risk concentrations;
 - (f) appropriate stress tests are regularly performed for the material risks and the overall risk profile at group level, and a possible need for action is considered on the basis of the results;
 - (g) the group audit function reports to the management board and the supervisory board at appropriate intervals and at least once a quarter;
- 4 adequate staffing and technical and organisational resources at the group pursuant to section 25a (1) sentence 3 number 4; as a minimum, the management board shall ensure that the quantity and quality of the staffing and the scope and quality of the technical and organisational resources of the undertakings belonging to the group are commensurate with the respective internal operational needs, business activities and risk situation of the undertakings belonging to the group;
- 5 adequate contingency plans pursuant to section 25a (1) sentence 3 number 5 at group level for contingencies affecting time-critical activities and processes; as a minimum, the management board shall ensure that regular contingency tests are carried out in order to verify the suitability and effectiveness of the contingency plan at group level and the results are communicated to the respective responsible staff;
- 6 as a minimum, where activities and processes are outsourced to another undertaking pursuant to section 25b (1) sentence 1, appropriate processes and frameworks to avoid incurring excessive additional risks or impairing either the proper execution of business and services or the business organisation within the meaning of section 25a (1).

(4c) Should BaFin conclude that the institution or group does not have in place the strategies, processes, procedures, functions and frameworks pursuant to subsections (4a) and (4b), it may order, irrespective of other measures pursuant to this Act, that suitable measures be taken to rectify the identified deficiencies within an appropriate period of time.

(5) ¹In exceptional cases, BaFin may also revocably appoint as a management board member another person entrusted with the management of the business and empowered to represent it if that person is trustworthy and has the necessary professional qualifications; subsection (1) applies. ²If the institution is operated by a sole proprietor, a person whom the proprietor has entrusted with the management of the business and empowered to represent it may be revocably appointed as a management board member in exceptional cases under the conditions set out in sentence 1. ³If a person is appointed as a management board

member at the institution's request, the appointment may be revoked only at the request of the institution or the management board member.

Section 25d

Supervisory board

(1) ¹The members of the supervisory board of an institution, a financial holding company or a mixed financial holding company must be trustworthy, have the necessary expertise to fulfil their control function as well as to assess and monitor the business of the undertaking, and devote sufficient time to performing their duties. ²When assessing whether one of the persons specified in sentence 1 has the necessary expertise, BaFin takes account of the scope and complexity of the business conducted by the institution, group of institutions or financial holding group, financial holding company or mixed financial holding company.

(2) ¹The supervisory board as a whole shall have the necessary knowledge, skills and experience to fulfil its control function as well as to assess and monitor the management board of the institution, group of institutions or financial holding group, financial holding company or mixed financial holding company. ²This shall be without prejudice to the provisions of the laws on co-determination regarding the selection and removal from office of staff representatives on the supervisory board.

(3) ¹The following persons may not be members of the supervisory board of a CRR institution which is significant within the meaning of sentence 7:

- 1 members of the management board of the same undertaking;
- 2 former management board members of the same undertaking if two former management board members of that undertaking are already members of the supervisory board;
- 3 members of the management board an undertaking who, at the same time, are members of the supervisory board of more than two undertakings or
- 4 persons who are supervisory board members of more than four undertakings.

²Sentence 1 also applies to members of the supervisory board of a financial holding company or mixed financial holding company if this has been designated as the superordinated undertaking pursuant to section 10a (2) sentence 2 or 3 or section 10b (3) sentence 8 and a CRR institution is subordinated to it. ³Within the meaning of sentence 1 numbers 3 and 4, several directorships are considered to be one directorship if the directorships are carried out at undertakings

- 1 which belong to the same group of institutions, financial holding group or mixed financial holding group,
- 2 which are members of the same institutional protection scheme or
- 3 in which the institution has a significant holding.

⁴Directorships at organisations and undertakings which do not pursue predominantly commercial objectives, in particular undertakings which provide public services, are not included in the maximum number of directorships pursuant to sentence 1 numbers 3 and 4.

⁵Taking into account the specific circumstances and the nature, scope and complexity of the activities of the institution, group of institutions or financial holding group, financial holding company or mixed financial holding company, BaFin may permit a supervisory board member to hold an additional directorship on a supervisory board in excess of the maximum number of directorships permitted pursuant to sentence 1 numbers 3 and 4 provided that this does not prevent the member from devoting sufficient time to performing his/her functions in the undertaking in question. ⁶Sentence 1 number 4 shall not apply to heads of the administration of a local authority, a district or a city which is administrated as an independent district who are obliged to hold a directorship in a local government undertaking or local government special-purpose association. ⁷An institution is significant within the meaning of sentence 1 if its total assets equal or exceed €15 billion on average over the reporting dates of the preceding three completed financial years; the following institutions are always deemed to be significant:

- 1 institutions which, pursuant to Article 6 (4) of 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 (OJ L 287/63 of 29 October 2013), are supervised by the European Central Bank,
- 2 institutions categorised as having the potential to pose a systemic threat within the meaning of section 47 (1), and
- 3 financial trading institutions within the meaning of section 25f (1).

(3a) The following persons may not be members of the supervisory board of an institution which is neither a CRR institution nor a significant institution within the meaning of subsection (3) sentence 7 or of a financial holding company:

- 1 former management board members of the same undertaking if two former management board members of that undertaking are already members of the supervisory board, or
- 2 supervisory board members of more than five undertakings supervised by BaFin unless these undertakings are members of the same institutional protection scheme.

(4) Institutions, financial holding companies and mixed financial holding companies shall devote adequate human and financial resources to easing the induction of supervisory board members and facilitating such training as is necessary to ensure that they maintain the necessary expertise for the position.

(5) The structure of the remuneration systems for members of the supervisory board must not cause conflicts of interest with respect to the effective performance of the supervisory board's oversight function.

(6) ¹The supervisory board shall oversee the management board, also with regard to its adherence to the applicable prudential supervisory requirements. ²It shall devote sufficient time to the discussion of strategies, risks and remuneration systems for management board members and employees.

(7) ¹Depending on the size, internal organisation and the nature, scope, complexity and riskiness of the activities of the undertaking, the supervisory board of one of the undertakings specified in subsection (3) sentence 1 shall appoint from among its members committees pursuant to subsections (8) to (12) which advise and support it in its functions. ²Each committee shall appoint one of its members as chair. ³The members of the committees shall have the necessary knowledge, skills and experience to perform the respective committee functions. ⁴To ensure cooperation and an exchange of expertise between the individual committees, at least one member of each committee shall belong to another committee. ⁵BaFin may require the formation of one or more committees if this appears necessary, particularly in consideration of the criteria pursuant to sentence 1 or for the proper performance of the supervisory board's control function.

(8) ¹Taking into account the criteria pursuant to subsection (7) sentence 1, the supervisory board of an undertaking specified in subsection (3) sentence 1 shall appoint from among its members a risk committee. The risk committee shall advise the supervisory board on the undertaking's current and future overall risk appetite and strategy and support the supervisory board in monitoring the implementation of this strategy by senior management. ³The risk committee shall monitor whether conditions in customer business are in line with the undertaking's business model and risk structure. ⁴Where this is not the case, the risk committee shall require from the management board proposals on how to bring the conditions in customer business into line with the business model and risk structure, and monitor their implementation. ⁵The risk committee shall examine whether incentives provided by the remuneration system take into consideration the risk, capital and liquidity structure of the undertaking and the likelihood and timing of earnings. ⁶This shall be without prejudice to the tasks of the remuneration committee pursuant to subsection (12). ⁷The chair of the risk committee or, if a risk committee has not been established, the chair of the supervisory board may make direct enquiries to both the head of the internal audit function and the head of the risk control unit. ⁸The management board shall be informed thereof. ⁹Where necessary, the risk committee may consult external experts. ¹⁰The risk committee or, if a risk committee has not been established, the supervisory board shall determine the nature, amount, format and frequency of the information to be provided by the management board on the subjects of strategy and risk.

(9) ¹Taking into account the criteria pursuant to subsection (7) sentence 1, the supervisory board of an undertaking specified in subsection (3) sentence 1 shall appoint from among its members an audit committee. ²The audit committee shall support the supervisory board, in particular, in monitoring

1 the accounting process;

- 2 the effectiveness of the risk management system and, in particular, of the internal control system and the internal audit function;
- 3 the implementation of statutory audits of accounts, particularly with regard to the independence of the auditor and of the services provided by the auditor (scope, frequency, reporting). The audit committee shall present the supervisory board with proposals for the appointment of an auditor as well as for the size of his/her remuneration and advise the supervisory board on whether to terminate or renew the audit mandate, and
- 4 that the management board swiftly rectifies by means of suitable measures the deficiencies identified by the auditor.

³The chair of the audit committee shall have expertise in the areas of accounting and statutory audits of accounts. ⁴The chair of the audit committee or, if an audit committee has not been established, the chair of the supervisory board may make direct enquiries to both the head of the internal audit function and the head of the risk control unit. ⁵The management board shall be informed thereof.

(10) ¹The supervisory board of an undertaking specified in subsection (3) sentence 1 may appoint a joint risk and audit committee if this is appropriate in consideration of the criteria pursuant to subsection (7) sentence 1. ²BaFin shall be informed thereof. ³Subsections (8) and (9) shall apply *mutatis mutandis* to the joint audit and risk committee.

(11) ¹Taking into account the criteria pursuant to subsection (7) sentence 1, the supervisory board of an undertaking specified in subsection (3) sentence 1 shall appoint from among its members a nomination committee. ²The nomination committee shall support the supervisory board in

- 1 identifying candidates to fill management board vacancies and preparing proposals for the selection of members of the supervisory board; in so doing, the nomination committee shall take into account the balance and diversity of the knowledge, skills and experience of all members of the board in question, prepare a job description with a candidate profile, and state the time commitment associated with the task;
- 2 deciding on a target to encourage the representation of the underrepresented gender on the supervisory board and a policy on how to meet that target;
- 3 periodically, and at least annually, assessing the structure, size, composition and performance of the management board and the supervisory board and shall make recommendations to the supervisory board in this regard; in so doing, the nomination committee shall ensure that decision-making within the management board is not dominated by any individuals or groups in a manner that is detrimental to the undertaking.
- 4 periodically, and at least annually, assessing the knowledge, skills and experience of the individual members of the management board and the supervisory board as well as of the respective boards collectively, and

- 5 reviewing the policy of the management board for selection and appointment of senior management and making recommendations on this matter to the management board.

³In performing its functions, the nomination committee may use all resources that it considers to be appropriate, and may take external advice. ⁴It shall receive appropriate funding from the undertaking to that effect.

(12) ¹Taking into account the criteria pursuant to subsection (7) sentence 1, the supervisory board of an undertaking specified in subsection (3) sentence 1 shall appoint from among its members a remuneration committee. ²The remuneration committee

- 1 shall monitor the adequate structure of the remuneration systems for the management board and employees and, in particular, the adequate structure of remuneration for the heads of the risk control function and the compliance function and for those employees with a material impact on the overall risk profile of the institution, and shall support the supervisory board in monitoring the adequate structure of remuneration systems for the employees of the undertaking; the impact of the remuneration systems on the management of risk, capital and liquidity shall be assessed;
- 2 shall prepare the decisions of the supervisory board on the remuneration of the management board and, in so doing, take particular account of the impact of said decisions on the risks and risk management of the undertaking; the long-term interests of shareholders, investors, other stakeholders in the institution and the public interest shall be taken into account.
- 3 shall support the supervisory board in monitoring the proper inclusion of the internal control function and all other material functions in the structure of the remuneration systems.

³At least one member of the remuneration committee shall have sufficient expertise and professional experience in the area of risk management and risk control, in particular with respect to mechanisms for gearing the remuneration systems to the overall risk appetite and strategy and to the capital base of the undertaking. ⁴If the supervisory board includes employee representatives pursuant to the laws on co-determination, the remuneration committee shall include at least one employee representative. ⁵The remuneration committee shall work together with the risk committee and shall take internal advice, for example, from the risk control unit and external advice from persons independent of the management board. ⁶Members of the management board must not participate in remuneration committee meetings at which their remuneration is discussed. ⁷The chair of the remuneration committee or, if a remuneration committee has not been established, the chair of the supervisory board may make direct enquiries to both the head of the internal audit function and the heads of the organisational units responsible for the structure of the remuneration systems. ⁸The management board shall be informed thereof.

Section 25e
Requirements for tied agents

¹If a CRR credit institution or a securities trading firm avails itself of a tied agent within the meaning of section 2 (10) sentence 1, it shall ensure that he/she is trustworthy and has the necessary professional qualifications, fulfils the statutory requirements when providing financial services, informs customers about his/her status pursuant to section 2 (10) sentences 1 and 2 prior to commencing business relationships and notifies customers about the termination of this status without delay. ²The CRR credit institution or securities trading firm shall keep the necessary evidence of the fulfilment of its duties pursuant to sentence 1 until at least five years have elapsed after the termination of the tied agent's status. ³More detailed provisions on the evidence required may be issued by way of a statutory order pursuant to section 24 (4). ⁴The remuneration systems for tied agents shall be structured in such a way that they do not conflict with the legitimate interests of the customers in a proper and adequate provision of financial services by the tied agent.

Section 25f
**Particular requirements for the proper business organisation of
CRR credit institutions, groups of institutions, financial holding groups,
mixed financial holding groups and financial conglomerates that include
a CRR institution; authority to issue orders**

(1) ¹All business within the meaning of section 3 (2) and (4) shall be performed at an economically, organisationally and legally independent undertaking (financial trading institution). ²The financial trading institution shall be subject to the additional requirements pursuant to subsections (2) to (6) for a proper business organisation.

(2) Section 2a shall not apply to the financial trading institution.

(3) ¹The financial trading institution shall safeguard its own refinancing. ²Business with the financial trading institution conducted by the CRR credit institution or by the undertakings which belong to a group of institutions, a financial holding group, a mixed financial holding group or a financial conglomerate that includes a CRR credit institution shall be treated in the same way as business with third parties.

(4) ¹In consultation with the Deutsche Bundesbank, the Federal Ministry of Finance may, by way of a statutory order for the purposes of monitoring compliance with the prohibition pursuant to section 3 (2) and (4) sentence 1 as well as for gauging the nature and scope of the business within the meaning of section 3 (2) sentence 2 and (4) sentence 1 for the CRR credit institution and the superordinated undertaking of a group of institutions, a financial holding group, a mixed financial holding group and a financial conglomerate that includes a CRR institution, establish reporting requirements and more detailed provisions on the nature, scope, timing and form of the information and submission of documents and on the permissible data storage media, transmission channels and data formats insofar as this is necessary for the fulfilment of BaFin's tasks, in particular in order to receive all information

that BaFin requires in the context of the prohibition pursuant to section 3 (2) and (4) sentence 1 as well as for gauging the nature and scope of the business within the meaning of section 3 (2) sentence 2 and (4) sentence 1. ²It may delegate this authority to BaFin by way of a statutory order, provided that statutory orders by BaFin are issued in agreement with the Deutsche Bundesbank. ³The central associations of the institutions shall be consulted before the statutory order is issued.

(5) The supervisory board of the financial trading institution, the CRR credit institution or the superordinated undertaking of the group of institutions, the financial holding group, the mixed financial holding group and the financial conglomerate that includes a CRR institution shall keep itself informed regularly and on an *ad hoc* basis of the business of the financial trading institution as well as the associated risks and shall monitor, in particular, compliance with the aforementioned requirements.

(6) The financial trading institution shall not provide any payment services nor conduct e-money business within the meaning of the Payment Services Oversight Act.

(7) BaFin may issue to the CRR credit institution, the superordinated undertaking of a group of institutions, a financial holding group, a mixed financial holding group or a financial conglomerate that includes a CRR credit institution as well as to the financial trading institution orders that are appropriate and necessary for ensuring a proper business organisation, also within the meaning of subsections (1) to (6).

Division 5a CASHLESS PAYMENTS; PREVENTION OF MONEY LAUNDERING, TERRORIST FINANCING AND OTHER CRIMINAL ACTIONS TO THE DETRIMENT OF INSTITUTIONS

Section 25g

Fulfilment of particular organisational duties in connection with cashless payments

(1) BaFin will monitor the fulfilment of the credit institutions' duties pursuant to

- 1 Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L 345/1 of 8 December 2006),
- 2 Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266/1 of 9 October 2009), which was amended by Regulation (EU) No 260/2012 (OJ L 94/22 of 30 March 2012), and
- 3 EU Regulation No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94/22 of 30 March 2012).

(2) A credit institution shall have in place internal procedures and control systems which ensure that the obligations set out in the Regulations pursuant to subsection (1) numbers 1 to 3 are met.

(3) BaFin may issue to an institution and its management board orders which are appropriate and necessary to prevent or stop violations of the obligations under the regulations pursuant to subsection (1) numbers 1 to 3.

Section 25h Internal safeguards

(1) ¹Notwithstanding the duties cited in section 25a (1) of this Act and section 9 (1) and (2) of the Money Laundering Act, institutions as well as financial holding companies and mixed financial holding companies which are deemed to be superordinated undertakings pursuant to section 10a (2) sentence 2 or 3 or section 10a shall have in place adequate risk management as well as policies and procedures for the prevention of money laundering, terrorist financing or other criminal actions which might jeopardise the institution's assets. ²To this end, they shall create and update adequate business and customer-related safeguards, and conduct checks. ³This includes the ongoing development of suitable strategies and safeguards to prevent the misuse of new financial products and technologies for the purpose of money laundering and terrorist financing or benefiting the anonymity of business relationships and transactions.

(2) ¹Credit institutions shall operate and update appropriate IT systems which enable them to identify business relationships and individual transactions in payment operations that appear dubious or unusual in the light of knowledge of methods of money laundering, terrorist financing and other criminal actions within the meaning of subsection (1) sentence 1 which is available publicly or to the credit institution. ²The credit institutions may collect, process and use personal data insofar as this is necessary to fulfil this duty. ³BaFin may lay down criteria which, if they are met, allow credit institutions to waive the use of systems pursuant to sentence 1.

(3) ¹The credit institution shall investigate every circumstance that appears dubious or unusual pursuant to subsection (2) sentence 1 in order to be able to monitor and assess the risk involved in the relevant business relationships or transactions and, if necessary, examine whether grounds exist for making a suspicious transaction report pursuant to section 11 (1) of the Money Laundering Act or for notifying the appropriate authorities pursuant to section 158 of the Code of Criminal Procedure (*Strafprozessordnung*). ²The institution shall record and store appropriate information about these circumstances pursuant to section 8 of the Money Laundering Act which is necessary to demonstrate to BaFin that these circumstances do not suggest that an action pursuant to section 261 of the Criminal Code or terrorist financing has been or is being committed or attempted. ³Subsection (2) sentence 2 shall apply *mutatis mutandis*. ⁴In individual cases, institutions may transmit information to each other in keeping with their duty to investigate pursuant to sentence 1 if the matter concerns a striking or unusual circumstance relevant to money laundering, terrorist financing or some

other criminal action and there are tangible grounds for believing that the recipient of the information needs it in order to assess whether the matter should be reported pursuant to section 11 of the Money Laundering Act or whether the relevant authorities should be notified pursuant to section 158 of the Code of Criminal Procedure. ⁵The recipient may use the information solely for the purpose of preventing money laundering, terrorist financing or other criminal actions and only under the conditions stipulated by the institution transmitting the information.

(4) ¹Institutions shall appoint a compliance officer (money laundering), who shall be directly subordinate to the management board. ²The compliance officer is responsible for carrying out the provisions regarding the combating and prevention of money laundering and terrorist financing and is the contact person for the criminal prosecution authorities, the Federal Criminal Police Office – Financial Intelligence Unit – and BaFin. ³The compliance officer shall report direct to the management board. ⁴For institutions, this applies as the superordinated undertaking also vis-à-vis a group of institutions or a financial holding group within the meaning of section 10a, a mixed financial holding group within the meaning of section 10a or as the parent undertaking also vis-à-vis a financial conglomerate within the meaning of section 1 (20). ⁵Institutions shall maintain and effectively deploy the means and procedures necessary for properly performing the compliance officer's tasks. ⁶The compliance officer shall be given unimpeded access to all information, data, records and systems that may be relevant to performing his/her tasks. ⁷He/she shall be given sufficient powers to be able to fulfil his/her function. ⁸BaFin shall be notified of the compliance officer's appointment and release from his/her duties.

(5) ¹Subject to BaFin's prior consent, institutions may arrange to have internal safeguards pursuant to this provision carried out by a third party within the scope of contractual agreements. ²Such consent may be granted if the third party guarantees that the safeguards will be properly carried out and that the institutions' ability to control and BaFin's ability to monitor are not impaired.

(6) In individual cases, BaFin may issue orders to an institution that are appropriate and necessary for making the arrangements specified in subsections (1), (2), (3) and (4).

(7) ¹The Federal Republic of Germany – Finance Agency shall be deemed to be an institution within the meaning of subsections (1) to (5). ²To this extent, the Federal Ministry of Finance shall monitor compliance with subsections (1) to (5) as part of its supervision pursuant to section 2 (1) of the Federal Government Debt Management Act (*Bundesschuldenwesengesetz*).

(8) The Deutsche Bundesbank shall be deemed to be an institution within the meaning of subsections (1) to (4).

(9) ¹The function of the compliance officer within the meaning of subsection (4) and the duties to prevent other criminal actions within the meaning of subsection (1) sentence 1 shall be performed by one unit within the institution. ²At the institution's request, BaFin can

determine that another unit within the institution is to be responsible for the prevention of other criminal actions if there is a good reason for doing so.

Section 25i **Simplified due diligence**

(1) ¹Where the conditions specified in section 25k of this Act and section 6 of the Money Laundering Act do not exist, the institutions may, over and above section 5 of the Money Laundering Act, apply simplified due diligence, subject to a risk assessment of the institution, in the following case groups owing to special circumstances in individual cases:

- 1 subject to sentence 2, upon the conclusion of
 - (a) a government-subsidised funded pension agreement,
 - (b) an agreement on the investment of capital formation benefits, provided that the agreement fulfils the conditions for a government subsidy,
 - c) a consumer loan agreement or an agreement on remunerated financial accommodation, provided that number 3 letter (d) is observed,
 - (d) a credit agreement as part of a government promotion programme that is processed via a Federal Government or state government promotional bank and whose loan principal must be used for a specific purpose,
 - (e) a credit agreement for sales financing,
 - (f) any other credit agreement in which the credit account is used solely to process the loan and the loan is repaid from an account held by the borrower with a credit institution within the meaning of section 1 (1) with the exception of the undertakings specified in section 2 (1) numbers 3 to 8, with a credit institution in another member state of the European Union or with a branch in Germany of a credit institution domiciled outside Germany,
 - (g) a savings agreement, and
 - (h) a lease agreement;

- 2 subject to sentence 2, in any other cases insofar as the following conditions are met:
 - (a) the agreement is in writing,
 - (b) the transactions in question are settled via an account held by the customer with a credit institution within the meaning of section 1 (1) with the exception of the undertakings specified in section 2 (1) numbers 3 to 8, with a credit institution in another member state of the European Union or with a branch in Germany of a credit institution domiciled outside Germany or via a credit institution domiciled in a non-EEA state to which requirements equivalent to those in Directive 2005/60/EC apply,

- (c) the product or the related transaction is not anonymous and enables section 3 (2) sentence 1 number 3 of the Money Laundering Act to be applied in good time, and
 - (d) the payments under the agreement or the related transaction cannot be made in favour of a third party except in the event of death or impairment, if a certain age limit is exceeded or in comparable cases;
- 3 subject to sentence 2, in the case of products or related transactions allowing investment in financial assets or claims, such as insurance or any other contingent claims, if over and above the conditions specified in number 3
- (a) the payments under the product or the transaction can be made only in the long term,
 - (b) the product or the transaction cannot be used as collateral, and
 - (c) it is not possible to make premature payments and apply buyback clauses during the term of the agreement and the agreement cannot be terminated prematurely.

²However, a low risk shall be deemed to exist in the cases specified in sentence 1 numbers 1 to 3 only if the following thresholds are not exceeded:

- 1 for agreements within the meaning of sentence 1 number 1 letters (a), (b), (d) and (f) or for agreements within the meaning of sentence 1 numbers 2 and 3, payments totalling €15,000,
- 2 for agreements within the meaning of sentence 1 number 1 letters (c), (e) and (h) or for any other agreements involving the financing of assets or their use and in which ownership of the asset is not transferred to the contracting party or the user until the agreement is completed, payments totalling €15,000 per calendar year,
- 3 for savings agreements within the meaning of sentence 1 number 1 letter (g), €1,000 per calendar year in the case of periodic payments or €2,500 for a one-off payment.

(2) ¹Subsection (1) shall not apply if an institution has information with regard to a specific transaction or business relationship which indicates that the risk of money laundering or terrorist financing is not low. ²Institutions shall record and store appropriate information pursuant to section 8 of the Money Laundering Act which is necessary to demonstrate to BaFin that the conditions for applying simplified due diligence are met.

Section 25j
Simplified identification procedure

¹Notwithstanding section 4 (1) of the Money Laundering Act, verification of the identity of the contracting party and the economic beneficiary can also be completed without delay after an account or a safe custody account has been opened. ²In this case, it must be ensured that no funds can be withdrawn from the account or safe custody account before the verification of identity has been completed. Where received funds are repaid, they may only be dispensed to the depositor.

Section 25k
Enhanced due diligence

(1) ¹Over and above section 6 of the Money Laundering Act, institutions must comply with enhanced due diligence standards commensurate with a higher risk also in the settlement of payment transactions as part of business relationships with correspondent institutions domiciled in a non-EEA state and correspondent institutions domiciled in an EEA country subject to an assessment by the institution as higher risk. ²Insofar as these business relationships do not concern the settlement of payment transactions, this is without prejudice to section 5 (2) number 1 of the Money Laundering Act. ³Section 3 (4) sentence 2 of the Money Laundering Act shall apply *mutatis mutandis*.

(2) In the cases cited in subsection (1), institutions must

- 1 obtain sufficient publicly available information about the correspondent institution and its business and management structure in order to be able to understand fully, both before and during such a business relationship, the nature of the business operations conducted by the correspondent institution and assess its reputation and controls for combating money laundering and terrorist financing as well as the quality of its supervision,
- 2 lay down and document the respective responsibilities of both institutions with regard to compliance with the due diligence standards before establishing such a business relationship,
- 3 ensure that, before such a business relationship is established by an agent acting on the obligated party's behalf, he/she obtains the approval of a superior at the institution,
- 4 take measures to ensure that they do not establish or maintain a business relationship with a credit institution of which it is known that its accounts are used by a shell bank within the meaning of Article 3 (10) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309/15) as last amended by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (OJ L 319/1), and

5 take measures to ensure that the correspondent institution does not permit transactions via interim accounts/pass-through accounts.

(3) Notwithstanding section 3 (2) sentence 1 number 2 of the Money Laundering Act, the due diligence pursuant to section 3 (1) numbers 1 and 3 of the Money Laundering Act shall apply to obligated parties pursuant to section 2 (1) numbers 1 and 2 of the Money Laundering Act when accepting cash irrespective of any thresholds specified in the Money Laundering Act or in this Act, insofar as foreign currency dealing within the meaning of section 1 (1a) sentence 2 number 7 is not settled via a customer account opened with the obligated party and the transaction involves a value of €2,500 or more.

(4) Factoring institutions within the meaning of section 1 (1a) sentence 2 number 9 shall take appropriate measures to combat a perceptibly higher risk of money laundering when accepting payments from debtors who were unknown when the master agreement was concluded.

(5) ¹If facts are known or assessments are received from national or international agencies that combat money laundering and terrorist financing, which warrant the assumption that a higher risk exists in additional cases, in particular in connection with compliance with due diligence standards in a state, BaFin may order that an institution must monitor a transaction or a business relationship more closely, in particular the origin of the transferred assets of a customer domiciled in such a state which are used within the scope of the business relationship or the transaction, and satisfy additional due diligence and organisational obligations commensurate with the higher risk. ²Institutions shall record and store appropriate information on the measures taken in accordance with section 8 of the Money Laundering Act. ³Sentences 1 and 2 shall also apply to institutions and superordinated undertakings pursuant to section 25l (1).

Section 25l

Group-wide compliance with due diligence standards

(1) ¹The institutions and undertakings specified in section 25h (1), (3) and (4), as superordinated undertakings, must develop group-wide internal safeguards pursuant to section 9 of the Money Laundering Act and section 25h (1), (3) and (4) of this Act and must ensure compliance with the due diligence standards pursuant to sections 3, 5 and 6 of the Money Laundering Act and sections 25i and 25k of this Act as well as the record-keeping obligation pursuant to section 8 of the Money Laundering Act with regard to their subordinated undertakings and branches. ²The senior managers within the meaning of section 1 (2) sentence 1 shall be responsible for the proper fulfilment of the duties pursuant to sentence 1. ³Insofar as the measures to be taken pursuant to sentence 1 as part of establishing or conducting business relationships or transactions are not permissible or actually feasible in a non-EEA state in which the undertaking is domiciled pursuant to the laws of that state, the superordinated undertaking or the parent undertaking must ensure that a subordinated undertaking or branch does not establish or maintain any business relationships or conduct any transactions in this non-EEA state. ⁴If a business relationship

already exists, the superordinated undertaking or the parent undertaking must ensure that the subordinated undertaking or branch ends this relationship by termination of contract or in some other way regardless of any other statutory or contractual provisions. ⁵If stricter obligations apply in the foreign state in which a subordinated undertaking or branch is domiciled, these stricter obligations must be fulfilled there.

(2) Financial holding companies or mixed financial holding companies which are deemed to be the superordinated undertaking pursuant to section 10a are obligated parties within the meaning of section 2 (1) number 1 of the Money Laundering Act ²In this respect, they shall also be subject to supervision by BaFin pursuant to section 16 (1) in conjunction with subsection (2) number 2 of the Money Laundering Act.

Section 25m Prohibited business

The following activities are prohibited:

- 1 the establishment or maintenance of a correspondent banking relationship or any other business relationship with a shell bank within the meaning of Article 3 (10) of Directive 2005/60/EC and
- 2 the setting-up and maintenance of accounts in the name of the institution or for third-party institutions which customers can operate independently to conduct their own transactions; this is without prejudice to section 154 (1) of the Fiscal Code.

Section 25n Due diligence and organisational duties in e-money business

(1) When issuing e-money within the meaning of the Payment Services Oversight Act, the institution must comply with the duties of section 3 (1) numbers 1 and 4, section 4 (1) to (4), section 7 (1) and (2) and section 8 of the Money Laundering Act.

(2) ¹These duties need not be met if the e-money amount issued to the e-money bearer and saved on an e-money carrier is 100 euro or less per calendar month and it is guaranteed that

- 1 the e-money issued cannot technically linked to the e-money of another e-money holder or to the e-money of another issuer,
- 2 the duties listed in subsection (1) are met when the e-money issued is redeemed against the issue of cash, unless the redemption of the e-money relates to a value of 20 euro or less or the redemption takes the form of a credit transfer to an account of the e-money holder with a CRR credit institution or of an e-money institution pursuant to section 1 (2a) of the Payment Services Oversight Act and
- 3 where the electronic money is issued on a rechargeable e-money carrier, the maximum amount of 100 euro per calendar month named in sentence 1 cannot be exceeded.

²For the threshold of sentence 1 it is immaterial whether the e-money holder acquires the e-money through one process or various processes provided there is evidence to suggest that they are linked.

(3) ¹Where e-money is issued via a rechargeable e-money carrier, the e-money issuer must maintain files recording all e-money amounts that have been issued to an already identified e-money holder and redeemed, citing the time and the issuing or redeeming bodies. ²Section 8 (2) to (4) of the Money Laundering Act shall apply *mutatis mutandis*.

(4) If facts are known that warrant the assumption that, when using an e-money carrier, the e-money issued can be associated with the e-money of another e-money holder or with e-money of another issuer or if facts justify the assumption that, in connection with other technically possible uses of this e-money carrier, its sale or the involvement of certain acceptance points there is a heightened risk of money laundering, the financing of terrorism or other criminal actions pursuant to section 25c (1), BaFin may, in order to counteract these risks with suitable measures,

- 1 issue instructions to the management of the institution;
- 2 prohibit the institution from using this e-money carrier or order other suitable and necessary technical changes to this e-money carrier,
- 3 oblige the institution to meet risk-commensurate duties pursuant to sections 3 to 9 of the Money Laundering Act.

(5) Where the use of an e-money carrier involves a small risk of money laundering, financing of terrorism or other criminal actions pursuant to section 25h (1), BaFin may, subject to the proviso that this can be revoked at any time, allow the institution to meet simplified due diligence duties pursuant to section 5 of the Money Laundering Act or absolve it from meeting other duties.

Division 5b SUBMISSION OF ACCOUNTS

Section 26

Submission of annual accounts, management report and audit reports

(1) ¹Institutions shall draw up their annual accounts for the previous financial year in the first three months of their financial year, and shall submit their annual accounts as drawn up, and subsequently also as approved, and their management report to BaFin and the Deutsche Bundesbank without delay pursuant to sentence 2. ²The annual accounts shall bear an audit certificate (*Bestätigungsvermerk*) or a note accounting for the withholding of such a certificate. ³The auditor shall submit his/her report on the auditing of the annual accounts (audit report) to BaFin and the Deutsche Bundesbank without delay after the completion of the audit. ⁴In the case of credit institutions which belong to a credit cooperative audit

association or are audited by the audit office of a savings bank and giro association, the auditor shall submit the audit report only if requested to do so by BaFin.

(2) If an additional audit has taken place in connection with a deposit guarantee scheme, the auditor or audit association shall submit the report on this audit to BaFin and the Deutsche Bundesbank without delay.

(3) ¹An institution which draws up a set of consolidated accounts or a consolidated management report shall submit these documents to BaFin and the Deutsche Bundesbank without delay. ²The superordinated undertaking of a financial holding group within the meaning of section 10a, of a mixed financial holding group within the meaning of section 10a or of a financial conglomerate shall submit a set of consolidated accounts or a consolidated management report without delay if the ultimate financial holding company in the financial holding group or the ultimate mixed financial holding company in the mixed financial holding group or in the financial conglomerate draws up a set of consolidated accounts or a consolidated management report. ³The auditor of the consolidated accounts shall submit the audit reports on the consolidated accounts and consolidated management reports referred to in sentences 1 and 2 to BaFin and the Deutsche Bundesbank without delay after the completion of his/her audit. ⁴In the case of credit institutions which belong to a credit cooperative audit association or are audited by the audit office of a savings bank and giro association, the auditor shall submit the audit report only if requested to do so by BaFin.

(4) The provisions of subsection (3) shall apply *mutatis mutandis* to single-entity annual accounts pursuant to section 325 (2a) of the Commercial Code.

Division 5c DISCLOSURE

Section 26a

Disclosure by institutions

(1) ¹In addition to the disclosures to be made pursuant to Articles 435 to 455 of Regulation (EU) No 575/2013 as last amended, the group's legal and organisational structure as well as its principles of proper management shall be disclosed. ²CRR institutions shall additionally include in an annex to the annual accounts within the meaning of section 26 (1) sentence 2, specifying, by member state of the European Union and by third countries in which they have establishments, the following information on a consolidated basis, shall have it audited by an auditor pursuant to section 340k of the Commercial Code and shall disclose:

- 1 names, nature of activities and geographical location of the branches;
- 2 turnover;
- 3 number of employees on a full-time equivalent basis;
- 4 profit or loss before tax;

- 5 tax on profit or loss;
- 6 public subsidies received.

³If the CRR institution is included in the consolidated accounts of another parent undertaking with head offices in a member state of the European Union or in a signatory state to the Agreement on the European Economic Area, which is subject to the requirements of Directive 2013/36/EU, it shall not be required to make the disclosures pursuant to sentence 2. ⁴CRR institutions shall disclose in their annual report their return on assets, calculated as their net profit divided by their total balance sheet. ⁵By 1 July 2014, global systemically important institutions authorised within Germany shall be obligated to submit to the European Commission the information referred to in sentence 2 numbers 4 to 6 on a confidential basis. ⁶Details on the requirements in sentences 2 to 5 shall be stipulated by the statutory order pursuant to section 10 (1) sentence 1 number 10.

(2) ¹If an institution fails to comply with its disclosure requirements, does not comply with them correctly, in full or in time in cases other than those referred to in Article 432 of Regulation (EU) No 575/2013 as last amended, BaFin may, in individual cases, issue orders that are appropriate and necessary for facilitating proper disclosure of the information. ²BaFin may stipulate times and locations for publication that deviate from those referred to in Articles 433 and 434 of Regulation (EU) No 575/2013 as last amended or may require additional information to be disclosed.

Division 6 AUDITS AND THE APPOINTMENT OF AUDITORS

Section 27 (Repealed)

Section 28 Appointment of the auditor in special cases

(1) ¹Institutions shall notify BaFin and the Deutsche Bundesbank of the auditor they have appointed without delay after making the appointment. ²Within one month of receiving such notification, BaFin may request the appointment of a different auditor if this appears necessary to achieve the object of the audit. ³If the institution has appointed an audit firm as the auditor, which was the institution's auditor in one of the two preceding financial years, BaFin may request that the responsible audit partner be changed if the previous audit including the audit report did not fulfil the object of the audit; section 319a (1) sentence 5 of the Commercial Code shall apply *mutatis mutandis*. ⁴Objections to and appeals against measures pursuant to sentence 2 or 3 shall have no suspensory effect.

(2) ¹The court having jurisdiction at the domicile of the institution will appoint an auditor at the request of BaFin if

- 1 the notification pursuant to subsection (1) sentence 1 is not effected without delay after the end of the financial year;
- 2 the institution does not comply without delay with the request to appoint a different auditor pursuant to subsection (1) sentence 2;
- 3 the auditor chosen has declined to accept the auditing mandate, is no longer active, or is unable to conclude the audit in time, and the institution has not appointed a different auditor without delay.

²The appointment by the court shall be final. ³Section 318 (5) of the Commercial Code shall apply *mutatis mutandis*. ⁴The court, at the request of BaFin, may terminate the appointment of an auditor appointed pursuant to sentence 1.

(3) Subsections (1) and (2) shall not apply for credit institutions which belong to a credit cooperative audit association or are audited by the audit office of a savings bank and giro association.

Section 29 Special duties of the auditor

(1) ¹When auditing the annual accounts or interim accounts, the auditor shall also examine the institution's financial situation. ²When auditing the annual accounts, he/she shall determine in particular whether the institution has fulfilled the following notification requirements and other requirements:

- 1 the notification requirements pursuant to sections 11, 12a, 14 (1) and pursuant to Regulation (EU) No 575/2013 as last amended, pursuant to sections 15, 24 and 24a in each case also in conjunction with a statutory order pursuant to section 24 (4) sentence 1, pursuant to section 24a also in conjunction with a statutory order pursuant to section 24a (5), and
- 2 the requirements
 - (a) pursuant to sections 10a, 10c to 10i in each case also in conjunction with a statutory order pursuant to section 10 (1) sentence 1 number 5, pursuant to sections 11, 13 to 13c, 18, 25 (1) and (2), section 25a (1) sentence 3 in each case also in conjunction with a statutory order pursuant to section 25 (3) and section 25a (5) also in conjunction with a statutory order pursuant to section 25a (6), pursuant to section 25a (1) sentence 6 number 1, subsection (3), pursuant to sections 25b, 25c (2) to (4b), section 25d (3) to (12), section 26a, pursuant to sections 13 and 14 (1), in each case also in conjunction with a statutory order pursuant to section 22, pursuant to section 51a (1) also in conjunction with a statutory order pursuant to section 51a (1), pursuant to section 51b (1) also in conjunction with a statutory order pursuant to section 51b (2) and pursuant to section 51c (1),

- (b) pursuant to sections 17, 20, 23, 25 and 27 of the Supervision of Financial Conglomerates Act,
- (c) pursuant to Article 4 (1), (2) and (3) subparagraph 2, Article 9 (1) to (4) and Article 11 (1) to (10), (11) subparagraph 1 and (12) of Regulation (EU) No 648/2012,
- (d) pursuant to Articles 92 to 386 of Regulation (EU) No 575/2013 also in conjunction with a statutory order pursuant to section 10 (1) sentence 1, pursuant to Articles 387 to 403 of Regulation (EU) No 575/2013 also in conjunction with a statutory order pursuant to section 13 (1) sentence 1, pursuant to Articles 404 to 409 of Regulation (EU) No 575/2013.

³If an institution is exempt pursuant to section 2a (1), the auditor shall check for the continued existence of the conditions referred to in Article 7 of Regulation (EU) No 575/2013 as last amended. ⁴If an institution is exempt pursuant to section 2a (3), the auditor shall check for the continued existence of the conditions referred to in Article 8 of Regulation (EU) No 575/2013 as last amended. ⁵If BaFin has issued provisions vis-à-vis the institution regarding the content of the audit pursuant to section 30, these provisions must be taken into consideration by the auditor. ⁶If unrealised reserves are included in the institution's liable capital, the auditor, when auditing the annual accounts, shall likewise examine whether section 10 (4a) to (4c) in the version in force up to 31 December 2013 was complied with when ascertaining those reserves. ⁷In the case of a credit institution that was requested to prepare a recovery plan pursuant to section 47 (1), the auditor shall likewise examine whether the recovery plan meets the criteria pursuant to section 47 (1) sentence 2 and pursuant to section 47a (1) to (3) and (4) sentences 2 and 4. ⁸The findings shall be included in the audit report.

(1a) ¹Subsection (1) shall apply with respect to the requirements pursuant to Article 4 (1), (2) and (3) subparagraph 2, Article 9 (1) to (4) and Article 11 (1) to (10), (11) subparagraph 1 and (12) of Regulation (EU) No 648/2012 for the auditing of the annual accounts of central counterparties subject to the proviso that the auditor shall additionally have to examine whether the requirements pursuant to Article 7 (1) to (4), Article 8 (1) to (4) and Articles 26, 29, 33 to 54 of Regulation (EU) No 648/2012 and the regulatory technical standards adopted in accordance with these articles are complied with. ²Sentence 1 shall apply *mutatis mutandis* for the condensed set of accounts of a central counterparty if such accounts must be prepared pursuant to statutory requirements.

(2) ¹The auditor shall also examine whether the institution has fulfilled its obligations pursuant to sections 24c and 25h to 25n, the Money Laundering Act and Regulation (EC) No 1781/2006; in the case of credit institutions, the auditor shall also examine whether the credit institution has fulfilled its obligations pursuant to Regulation (EC) No 924/2009 and Regulation (EU) No 260/2012. ²Furthermore, he/she shall examine compliance with the notification and publication requirements and other requirements contained in Articles 5 to 10 and 12 to 14 of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 regarding short selling and certain aspects of credit default swaps (OJ EU

L 86/1 of 24 March 2012). ²In the case of institutions, branches within the meaning of section 53b and branches within the meaning of section 53 which conduct safe custody business, he/she shall audit that business particularly carefully unless it is to be audited pursuant to section 36 (1) sentence 2 of the Securities Trading Act; this audit must also cover compliance with section 128 of the Companies Act on disclosure requirements and section 135 of the Companies Act on the exercising of voting rights. ⁴The auditor shall report separately on the items mentioned in sentences 1 to 3, respectively; section 26 (1) sentence 3 shall apply *mutatis mutandis*.

(3) ¹If, in the course of his/her audit, the auditor becomes aware of facts which might warrant the qualification or withholding of the audit certificate, jeopardise the existence of the institution or fundamentally impair its development, which constitute a material infringement of the provisions on the institution's approval requirements or the pursuit of business under this Act, or which indicate that the senior managers have seriously infringed the law, the articles of association, articles of incorporation or the partnership agreement, he/she shall notify BaFin and the Deutsche Bundesbank without delay. ²At the request of BaFin or the Deutsche Bundesbank, the auditor shall explain the audit report to them, and inform them of any other facts which have come to his/her attention in the course of the audit which suggest that the business of the institution is not being conducted properly. ³The notification, explanatory and disclosure requirements pursuant to sentences 1 and 2 shall also apply in relation to an undertaking which is closely linked to the institution if the auditor becomes aware of the relevant facts while auditing the institution. ⁴The auditor shall not be liable for the accuracy of facts which he/she reports in good faith pursuant to this subsection.

(4) ¹The Federal Ministry of Finance is authorised, in agreement with the Federal Ministry of Justice and after consulting the Deutsche Bundesbank, to issue by way of a statutory order more detailed provisions on

- 1 the object of the audit pursuant to subsections (1) and (2),
- 2 the time at which it is carried out and
- 3 the contents of the audit reports

insofar as this is necessary for the performance of BaFin's functions, and especially in order to enable it to identify irregularities which may jeopardise the safety of the assets entrusted to the institution or which may impair the proper conduct of banking business or provision of financial services, and to obtain consistent records for assessing the business conducted by institutions. ²The statutory order may stipulate that the requirements set out in subsections (1) to (3) shall also be complied with when auditing the consolidated accounts of a group of institutions, financial holding group or mixed financial holding group or a financial conglomerate; more detailed provisions on the object of the audit, the time at which it is to be carried out and the contents of the audit report may be issued pursuant to sentence 1. ³The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 30

Definition of audit content

¹Without prejudice to the special duties of the auditor pursuant to section 29, BaFin can also issue provisions vis-à-vis the institution regarding the content of the audit, which must be taken into consideration by the auditor when auditing the annual accounts. ²In particular, BaFin can determine areas of emphasis for the audits.

Division 7 EXEMPTIONS

Section 31

Exemptions; authority to issue orders

(1) ¹The Federal Ministry of Finance, after consulting the Deutsche Bundesbank, may exempt, by way of a statutory order not requiring the consent of the Bundesrat,

- 1 all institutions, or certain types or categories of institutions, from the duty to report specific exposures and facts pursuant to section 14 (1) and section 24 (1) numbers 1 to 4 and 6 and (1a), certain types or categories of institutions from the duty to submit financial information pursuant to section 25 or from the duty pursuant to section 26 (1) sentence 2 to elucidate the annual accounts in notes thereon, and the senior manager(s) of an institution from the duty to report participating interests pursuant to section 24 (3) number 2, if these disclosures are immaterial for supervisory purposes;
- 2 certain types or categories of institutions from compliance with section 26, if this is warranted by the particular nature of their business;
- 3 all institutions that are not CRR institutions, or certain types or categories of institutions that are not CRR institutions, from duties to report specific exposures and facts pursuant to Regulation (EU) No 575/2013.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank.

(2) ¹BaFin may exempt individual institutions from the requirements of section 13 (1) and (2), section 15 (1) sentence 1 numbers 6 to 11 and (2), section 24 (1) numbers 1 to 4, sections 25, 26 and 29 (2) sentence 2, as well as from the requirement of section 15 (1) sentence 1, ie to grant loans only on market terms, if this appears desirable for particular reasons, and especially because of the nature or scale of the business conducted. ²BaFin may also exempt undertakings which exclusively provide financial services pursuant to section 1 (1a) sentence 2 number 9 or number 10 from the requirements of section 25a (1) sentence 3 number 3 letter (c) if this appears desirable for particular reasons, and especially because of the size of the institution. ³The exemption may be granted either upon application by an institution or *ex officio*.

(3) A superordinated undertaking pursuant to section 10a shall notify BaFin and the Deutsche Bundesbank of its intention to make use of Article 19 (1) of Regulation (EU) No 575/2013 as last amended for an undertaking; it shall also submit a summary report once a year notifying which undertakings it has exempted pursuant to Article 19 (1) of Regulation (EU) No 575/2013 as last amended from the aggregation pursuant to section 12a (1) sentence 1, section 25 (2) and pursuant to Articles 11 to 18 of Regulation (EU) No 575/2013 as last amended.

(4) (Repealed)

(5) (Repealed)

(6) (Repealed)

Part III

Provisions concerning the prudential supervision of institutions

Division 1 AUTHORISATION OF BUSINESS OPERATIONS

Section 32 Authorisation

(1) ¹Anyone wishing to conduct banking business or to provide financial services in Germany commercially or on a scale which requires commercially organised business operations needs written authorisation from BaFin; section 37 (4) of the Act on Administrative Procedures shall apply. ²The application for authorisation shall contain the following information:

- 1 suitable evidence of having the resources needed for business operations;
- 2 the names of the senior managers;
- 3 the information required to assess the trustworthiness of the applicants and of the persons specified in section 1 (2) sentence 1;
- 4 the information required to assess whether the proprietors and the persons specified in section 1 (2) sentence 1 have the professional knowledge, skills and experience necessary to manage the institution;
- 4a the information required to assess whether the senior managers have sufficient time to dedicate to the performance of their tasks;
- 5 a viable business plan setting out the types of business envisaged, the structural organisation and the planned internal control mechanisms of the institution;
- 6 where significant holdings are held in the institution:
 - (a) the names of the holders of the significant holdings,
 - (b) the amount of these holdings,
 - (c) the information required to assess the trustworthiness of these holders or of the legal representatives or of the general partners,
 - (d) where these holders are required to draw up annual accounts: their annual accounts for the past three financial years, along with the audit reports compiled by independent external auditors where such reports are to be prepared, and
 - (e) where these holders belong to a group: particulars of the group structure and, where such accounts are to be drawn up, the consolidated group accounts for the past three financial years, along with the audit reports compiled by independent external auditors where such reports are to be prepared;

- 6a where no significant holdings are held in the institution, the names of the up to 20 biggest shareholders;
- 7 information indicating a close link between the institution and other natural persons or other undertakings;
- 8 the names of the members of the supervisory body, along with the information required to assess their trustworthiness and expertise as well as the information required to assess whether they can commit sufficient time to the performance of their function.

³The reports and documentation to be submitted pursuant to sentence 2 shall be specified in more detail by way of a statutory order pursuant to section 24 (4). ⁴The requirements under sentence 2 number 6 letters (d) and (e) shall not apply to financial services institutions.

(1a) ¹Anyone wishing not only to conduct banking business or to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 5 and 11, but also to engage in proprietary business, also needs written authorisation from BaFin for this activity. ²Subsection (1) sentence 1 clause 2 and subsections (2), (4) and (5) as well as sections 33 to 38 shall apply *mutatis mutandis*.

(1b) Authorisation to engage in limited custody business within the meaning of section 1 (1a) sentence 2 number 12 may be granted only if authorisation to provide at least one financial service within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or to conduct banking business within the meaning of section 1 (1) sentence 2 has already been granted or is granted at the same time; the authorisation to engage in limited custody business shall expire upon the expiry or withdrawal of the aforementioned authorisation.

(2) ¹BaFin may grant authorisation subject to conditions which shall be consistent with the objective pursued by this Act. ²It may limit the authorisation to specific types of banking business or financial services.

(3) Before granting authorisation, BaFin shall consult the guarantee scheme appropriate for the institution.

(3a) On being granted authorisation, the institution, if it is liable to pay contributions pursuant to section 8 (1) of the Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz*), shall be informed of the compensation scheme to which it is assigned.

(4) BaFin shall publicise the granting of authorisation in the Federal Gazette.

(5) ¹BaFin shall keep a register of institutions on its website in which it shall enter all the domestic institutions which have been granted authorisation pursuant to subsection (1), also in conjunction with section 53 (1) and (2), along with the date on which authorisation was granted, the scope of the authorisation and, where applicable, the date of the authorisation's expiry or withdrawal. ²The Federal Ministry of Finance may, by way of a statutory order not

requiring the consent of the Bundesrat, issue more detailed provisions on the contents of the register and the institutions' duties to cooperate with regard to the keeping of the register.

(6) ¹Where a payment institution has been granted authorisation pursuant to section 8 (1) of the Payment Services Oversight Act or an e-money institution has been granted authorisation pursuant to section 8a (1) of the Payment Services Oversight Act and additionally provides financial services within the meaning of section 1 (1a) sentence 2 number 9, this payment institution or e-money institution shall not require authorisation pursuant to subsection (1). ²The reporting requirement pursuant to section 14 (1) shall be fulfilled and section 14 (2) to (4) shall apply.

Section 33

Refusal of authorisation

(1) ¹Authorisation must be refused if

- 1 the resources needed for business operations, in particular sufficient initial capital consisting of Common Equity Tier 1 capital, are not available in Germany; the initial capital which must be available is as follows:
 - (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, 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) 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) 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) in the case of CRR credit institutions: an amount equivalent to at least €5 million,
 - (e) (repealed)
 - (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) 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 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 23 (4) 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;
- 2 facts are known which reveal that an applicant or one of the persons specified in section 1 (2) sentence 1 is not trustworthy;
 - 3 facts are known which warrant the assumption that the holder of a major participating interest or, if this is a legal person, a legal representative or representative pursuant to the articles of association or articles of incorporation or, in the case of a commercial partnership, a partner is not trustworthy or, for other reasons, fails to satisfy the requirements to be set in the interests of the sound and prudent management of the institution;
 - 4 facts are known which reveal that the proprietor or one of the persons specified in section 1 (2) sentence 1 does not have the professional qualifications required to manage the institution and if no other has been designated as senior manager pursuant to section 25c (5);
 - 4a facts are known which reveal that a senior manager does not have sufficient time to perform his/her tasks;
 - 4b facts are known which reveal that a senior manager is in breach of the requirements of section 25c (2);
 - 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 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 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 the institution's main office and, to the extent that it is a legal person and not a branch within the meaning of section 53, its legal domicile are not in Germany;
- 7 the institution is not prepared or in a position to make the organisational arrangements necessary for the proper operation of the business for which it is seeking authorisation;
- 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.

²An investment adviser or investment broker who, in providing financial services, is not authorised to obtain ownership or possession of funds or securities of customers and who does not trade in financial instruments for his/her own account shall not be refused authorisation pursuant to sentence 1 letter (a) if, instead of the initial capital, he/she can demonstrate that, for the protection of customers, he/she has taken out appropriate insurance with an indemnity of at least €1,000,000 for each insured loss and at least €1,500,000 for all insured losses in an insurance year. ³Sentence 2 shall apply *mutatis 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.

(2) ¹BaFin may refuse authorisation if facts are known which warrant the assumption that effective supervision of the institution is impaired. ²This is especially the case if

- 1 the institution is integrated in a corporate network with other individuals or undertakings or is closely linked to such a network which, owing to the structure of cross-shareholdings or because of inadequate economic transparency, impairs the effective supervision of the institution;
- 2 effective supervision of the institution is impaired by the laws, regulations and administrative provisions of a non-EEA state applicable to such individuals or undertakings;
- 3 the institution is a subsidiary of an institution domiciled in a non-EEA state that is not effectively supervised in the state in which it has its domicile or head office, or whose competent supervisory agency is not willing to cooperate satisfactorily with BaFin;

³BaFin may also refuse to grant authorisation if, contrary to section 32 (1) sentence 2, the application contains insufficient data or documentation.

(3) Authorisation may not be refused for reasons other than those specified in subsections (1) and (3).

(4) ¹BaFin must inform the applicant whether authorisation will be granted or refused within six months of the applicant having submitted the complete documentation required for an

application for authorisation pursuant to section 32 (1) sentence 2. ²The application will be rejected if BaFin, within twelve months of it receiving the application, does not have sufficient information or documentation for it to make a decision on the application, despite having issued a deadline of one month for the application to be completed.

Section 33a

Deferral or restriction of authorisation in the case of undertakings domiciled outside the European Union

¹BaFin must defer the decision on an application for authorisation by undertakings domiciled outside the European Union or by subsidiaries of such undertakings, or must limit the authorisation, if a decision to this effect has been taken by the Council or the European Commission pursuant to Article 147 of Directive 2013/36/EU. ¹The deferral or limitation may not exceed three months from the date of the decision. ³Sentences 1 and 2 shall also apply to applications for authorisation submitted after the date of the decision. ⁴If the Council of the European Union decides to prolong the period pursuant to sentence 2, BaFin must take due account of this prolongation and prolong the deferral or limitation accordingly.

Section 33b

Consultation of the competent agencies of another EEA state

¹If authorisation is to be granted to conduct banking business pursuant to section 1 (1) sentence 2 number 1, 2, 4, or 10 or to provide financial services pursuant to section 1 (1a) sentence 2 numbers 1 to 4 to an undertaking which

- 1 is a subsidiary or an affiliated undertaking of a CRR institution or a primary insurance company and whose parent undertaking is authorised to operate in another EEA state, or
- 2 is controlled by the same natural persons or undertakings which control a CRR institution or a primary insurance company domiciled in another EEA state,

BaFin will consult the competent agencies in the home member state before granting authorisation. ²The consultation will include, in particular, the information required to assess the trustworthiness and professional qualifications of the persons specified in section 1 (2) sentence 1 as well as to assess the trustworthiness of the holders of a major participating interest in undertakings of the same group domiciled in the EEA state in question.

Section 34

Representation and continuation of business in the event of death

(1) Section 45 of the Industrial Code (*Gewerbeordnung*) shall not apply to institutions.

(2) ¹In the event of the death of the holder of authorisation, an institution's business may be continued on behalf of the heirs by two representatives without authorisation for a period of up to one year. ²The representatives shall be designated without delay following the death of

the holder of authorisation; they shall be deemed to be senior managers. ³If a representative is not trustworthy or does not have the necessary professional qualifications, BaFin can prohibit the continuation of business. ⁴BaFin can prolong the period pursuant to sentence 1 if there are special reasons for doing so. ⁵One representative shall be sufficient in the case of financial services institutions which, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers.

Section 35

Expiry and revocation of authorisation

(1) ¹Authorisation shall expire if it is not used within one year from the date on which it is granted. ²Authorisation shall likewise expire if the institution has been excluded from the compensation scheme pursuant to section 11 of the Deposit Guarantee and Investor Compensation Act. ³Authorisation to conduct 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) BaFin may revoke authorisation pursuant to the provisions of the Act on Administrative Procedures, and also if

- 1 the business operations to which the authorisation relates have not been conducted for more than six months;
- 2 a credit institution is operated in the legal form of a sole proprietorship;
- 3 it becomes aware of facts which would warrant refusal of authorisation pursuant to section 33 (1) sentence 1 numbers 1 to 8 or (2) numbers 1 to 3;
- 4 the discharge of an institution's obligations to its creditors, and particularly the safety of the assets entrusted to it, is endangered, and the danger cannot be averted by taking other measures under this Act; the safety of the assets entrusted to the institution is endangered, inter alia, by
 - (a) a loss amounting to half of its liable capital pursuant to Article 72 of Regulation (EU) No 575/2013 as last amended, or
 - (b) a loss amounting to more than 10 per cent of its liable capital pursuant to Article 72 of Regulation (EU) No 575/2013 as last amended in each of at least three successive financial years;
- 5 (repealed)
- 6 the institution has persistently contravened provisions of this Act, the Money Laundering Act, the Securities Trading Act or the regulations or orders issued to implement these Acts;
- 7 (repealed)

8 the prudential requirements in Articles 92 to 403 as well as 411 to 428 of Regulation (EU) No 575/2013 are no longer fulfilled.

(2a) ¹The authorisation will be revoked by BaFin if insolvency proceedings are initiated in respect of the institution or a dissolution order has been issued. ²The revocation of the authorisation 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.

(3) Section 48 (4) sentence 1 and section 49 (2) sentence 2 of the Act on Administrative Procedures concerning the period of one year shall not apply.

(4) If an institution's authorisation to conduct banking business or provide financial services is revoked, BaFin will inform without delay the competent agencies of the other EEA states in which the institution has established branches or has been providing cross-border services.

Section 36

Removal of senior managers or members of the supervisory body

(1) ¹In the cases specified in section 35 (2) numbers 3, 4, and 6, BaFin, instead of revoking authorisation, may demand the removal of the senior managers responsible and may also prohibit these senior managers from carrying out their activities at institutions organised in the form of a legal person. ²For the purposes of sentence 1, section 35 (2) number 4 shall apply subject to the proviso that, when calculating the amount of the loss, accounting conveniences used to reduce or avoid a balance sheet loss are disregarded.

(1a) ¹In the cases specified in Article 20 (1) letters (b) to (d) of Regulation (EU) No 648/2012, BaFin, instead of revoking authorisation, may demand the removal of the senior managers responsible and may also prohibit these senior managers from carrying out their activities at institutions organised in the form of a legal person. ²BaFin can also demand removal if the requirements of Article 27 (1) of Regulation No 648/2012 are not fulfilled or the requirements of Article 31 (1) of Regulation (EU) No 648/2012 are fulfilled.

(2) BaFin may also demand the removal of a senior manager and prohibit that senior manager from carrying out his/her activities at institutions organised in the form of a legal person if he/she has intentionally or recklessly contravened the provisions of this Act, Regulation (EU) No 575/2013, Regulation (EU) No 648/2012, the Act on Building and Loan Associations, the Safe Custody Act (*Depotgesetz*), the Money Laundering Act, the Capital Investment Code, the Pfandbrief Act, the Payment Services Oversight Act or the Securities Trading Act, the regulations issued to implement these laws, the legal acts adopted to implement Directive 2013/36/EU and Regulation (EU) No 575/2013, the legal acts adopted to implement Regulation (EU) No 648/2012, or orders issued by BaFin and he/she persists in such behaviour despite having been duly warned by BaFin.

(3) ¹BaFin 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)

sentences 1 and 2 and section 25d (3a) sentence 1 and prohibit such a person from carrying out his/her activities, if

- 1 facts are known which reveal that the person is not trustworthy;
- 2 facts are known which reveal that the person lacks the necessary expertise;
- 3 facts are known which reveal that the person does not devote sufficient time to carrying out his/her tasks;
- 4 the person was kept unaware of serious violations of the principles of proper 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 the person did not do everything needed to counter detected infringements and continues to refrain from doing so despite due warning by BaFin;
- 6 the person specified by section 25d (3) sentence 1 or sentence 2 is already a senior manager of the same undertaking;
- 7 the person specified by section 25d (3) sentence 1 or sentence 2 was a senior manager of the same undertaking and two former senior managers of the undertaking are already members of its supervisory body;
- 8 the person specified by section 25d (3) sentence 1 or sentence 2 exercises more than four controlling mandates and BaFin has not authorised him/her to exercise additional mandates;
- 9 the person specified by section 25d (3) sentence 1 or sentence 2 exercises more than one senior management function and two supervisory functions and BaFin has not authorised him/her to exercise additional mandates;
- 10 the person specified by section 25d (3a) sentence 1 exercises more than five controlling mandates at institutions under BaFin's supervision.

²For institutions that are subject to separate legal supervision on account of their legal form, a measure pursuant to sentence 1 shall only take place following consultation with the authority responsible for the legal supervision of such institutions. ³Where the court has, at the request of the supervisory body, been called upon to remove a member of that body, the relevant application may, provided that the requirements of sentence 1 numbers 1 to 9 have been met, also be submitted by BaFin if the supervisory board has failed to act on the removal instruction issued by the Supervisory Authority. ⁴The removal of employee representatives in the supervisory body shall take place solely in accordance with the provisions of the laws on co-determination (*Mitbestimmungsgesetze*).

Section 37

Intervention against unauthorised or prohibited business

(1) ¹If banking business is carried out or financial services are provided without the authorisation required under section 32, if clearing services are carried out without the authorisation as a central counterparty required by Article 14 of Regulation (EU) No 648/2012, or if business prohibited under section 3 is conducted, BaFin can order the undertaking and the members of its governing bodies to cease business operations immediately and to settle this business without delay. ²It may issue instructions for the settlement of the business and appoint a suitable person as the liquidator. ³It may publicise its measures pursuant to sentences 1 and 2. ⁴BaFin's powers pursuant to sentences 1 to 3 shall also apply vis-à-vis the undertaking involved in the initiation, conclusion or settlement of such business.

(2) The liquidator shall be authorised to file a petition for the initiation of insolvency proceedings over the undertaking's assets.

(3) ¹The liquidator shall receive appropriate remuneration and reimbursement of his/her expenses from BaFin. ²The amounts paid shall be refunded separately to BaFin by the undertaking and, at BaFin's request, shall be provided in advance. ³BaFin can instruct the undertaking concerned to pay the amount laid down by BaFin directly to the liquidator on BaFin's behalf if there is no reason to suspect that this may affect the liquidator's independence.

Section 38

Consequences of the revocation and expiry of authorisation; measures in the event of liquidation

(1) ¹If BaFin revokes authorisation or if authorisation expires, in the case of legal persons and commercial partnerships it may decide that the institution is to be liquidated. ²BaFin's decision shall have the effect of a dissolution order. ³The court of registration shall be informed of the decision and shall enter it accordingly in the commercial register or register of cooperative societies (*Genossenschaftsregister*).

(2) ¹BaFin may issue instructions regarding the liquidation of an institution or its banking business and financial services. ²The court shall appoint liquidators at BaFin's request if the persons otherwise appointed to liquidate the banking business and financial services offer no guarantee of proper liquidation. ³If responsibility therefor does not lie with the court, BaFin will appoint the liquidator.

(2a) ¹The liquidator shall receive appropriate remuneration and reimbursement of his/her expenses from BaFin. ²The amounts paid shall be refunded separately to BaFin by the legal person or commercial partnership concerned and, at BaFin's request, shall be provided in advance. ³BaFin can instruct the legal person or commercial partnership concerned to pay the amount laid down by BaFin directly to the liquidator on BaFin's behalf if there is no reason to suspect that this may affect the liquidator's independence.

(3) ¹BaFin will publicise the revocation or expiry of authorisation in the Federal Gazette. ²It will inform the competent agencies of the other EEA states in which the institution has established branches or has been providing cross-border services.

(4) Subsections (1) and (2) shall not apply to legal persons governed by public law.

Division 2 PROTECTED TERMS

Section 39

The terms "bank" and "banker"

(1) The terms "bank" ("Bank") or "banker" ("Bankier") or a term in which the words "bank" or "banker" appear, unless otherwise stipulated by law, may be used in the corporate name, as an addendum to the corporate name, to describe the business purpose or for advertising purposes only by

- 1 credit institutions with authorisation pursuant to section 32 or branches of undertakings pursuant to section 53b (1) sentences 1 and 2 or (7);
- 2 other undertakings which, upon this Act coming into force, were legitimately using such a term pursuant to previous provisions;

(2) The term "people's bank" ("Volksbank") or a term in which the words "people's bank" appear may be newly taken up only by credit institutions operating in the legal form of a registered cooperative society and belonging to an audit association.

(3) When granting authorisation, BaFin may decide that the terms specified in subsection (1) may not be used if, according to generally accepted standards, the nature or volume of the business conducted by the credit institution does not warrant the use of such a term.

Section 40

The term "savings bank"

(1) The term "savings bank" ("Sparkasse") or a term in which the words "savings bank" appear may be used in the corporate name, as an addendum to the corporate name, to describe the business purpose or for advertising purposes only by

- 1 public savings banks with authorisation pursuant to section 32;
- 2 other undertakings which, upon this Act coming into force, were legitimately using such a term pursuant to previous provisions;
- 3 undertakings which are newly established by restructuring the undertakings specified in number 2 as long as they, by virtue of their articles of association or articles of incorporation, exhibit specific features (in particular, tasks geared towards public

welfare and a restriction of their principal business operations to the economic area in which the undertaking is domiciled) to the same extent as before restructuring.

(2) Credit institutions within the meaning of section 1 of the Act on Building and Loan Associations may use the term “building and loan association” (“Bausparkasse”); registered cooperative societies which belong to an audit association may use the term “savings and loans bank” (“Spar- und Darlehenskasse”).

Section 41 Exceptions

¹Sections 39 and 40 shall not apply to undertakings that use the words “bank”, “banker” or “savings bank” in a context which precludes the impression that they conduct banking business. ²Credit institutions domiciled outside Germany may use the terms specified in section 39 (2) and section 40 in their corporate name, as an addendum to their corporate name, to describe their business purpose or for advertising purposes for their operations in Germany if they are entitled to use these terms in their country of domicile and append an addendum to the term referring to their country of domicile.

Section 42 BaFin’s decision

¹In cases of doubt, BaFin will decide whether an undertaking is authorised to use the terms specified in sections 39 and 40. ²It will inform the court of registration of its decisions.

Section 43 Registration provisions

(1) If authorisation is required to conduct banking business or provide financial services pursuant to section 32, entries in public registers may be made only if the court of registration has been furnished with evidence of such authorisation.

(2) ¹If an undertaking uses a corporate name or an addendum to a corporate name which is impermissible pursuant to sections 39 to 41, the court of registration shall compel the undertaking to refrain from using the corporate name or addendum to the corporate name by imposing an administrative fine; section 392 of the Act on the Procedure in Cases Involving Family Law and on Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) shall apply *mutatis mutandis*. ²This is without prejudice to section 395 of the Act on the Procedure in Cases Involving Family Law and on Matters of Non-Contentious Jurisdiction.

(3) BaFin shall be entitled to file petitions in proceedings before the court of registration regarding the entry or amendment of the legal relationships or corporate name of credit institutions or undertakings using terms that are impermissible pursuant to sections 39 to 41,

and may also seek the legal remedies permissible under the Act on the Procedure in Cases Involving Family Law and on Matters of Non-Contentious Jurisdiction.

Division 3 INFORMATION AND INSPECTIONS

Section 44

Information from and inspections of institutions, ancillary service providers, financial holding companies, mixed financial holding companies and undertakings included in supervision on a consolidated basis

(1) ¹An institution or a superordinated undertaking, the members of its governing bodies and its employees shall, upon request, provide BaFin, the persons and entities which BaFin uses in performing its functions and the Deutsche Bundesbank with information about all business activities, documentation and, if necessary, copies. ²BaFin may perform inspections at the institutions and superordinated undertakings, with or without a special reason, and may entrust the Deutsche Bundesbank with the task of carrying out such inspections; this shall include undertakings to which an institution or superordinated undertaking has outsourced major areas within the meaning of section 25b (external service providers). ³BaFin's staff, the staff of the Deutsche Bundesbank as well as any other persons whom BaFin uses to perform the inspections may enter and inspect the business premises of the institution, the external service provider and the superordinated undertaking for this purpose during ordinary office and business hours. ⁴The parties affected shall acquiesce to the measures taken under sentences 2 and 3.

(1a) If a central counterparty outsources operational functions, services or activities to an undertaking in accordance with the requirements of Article 35 (1) of Regulation (EU) No 648/2012, BaFin's powers pursuant to subsection (1) sentences 2 and 3 shall apply *mutatis mutandis* to these undertakings; subsection (1) sentence 4 shall apply *mutatis mutandis*.

(2) ¹A subordinated undertaking within the meaning of section 10a, a financial holding company at the head of a financial holding group within the meaning of section 10a, a mixed financial holding company at the head of a mixed financial holding group within the meaning of section 10a or a mixed holding company and a member of a governing body of such an undertaking shall, upon request, provide information, documentation and, if necessary, copies to BaFin, the persons and agencies which BaFin uses in performing its functions and the Deutsche Bundesbank, in order to enable them to check the accuracy of the information or data supplied and which are required for supervision on a consolidated basis or which are to be supplied in connection with a statutory order pursuant to section 25 (3) sentence 1. ²BaFin may perform inspections at the undertakings specified in sentence 1, with or without a special reason, and may entrust the Deutsche Bundesbank with the task of carrying out such inspections; subsection (1) sentence 2 clause 2 shall apply *mutatis mutandis*. ³BaFin's staff, the staff of the Deutsche Bundesbank as well as any other persons whom BaFin uses to perform the inspections may enter and inspect the undertakings' business premises for this

purpose during ordinary office and business hours. ⁴The parties affected shall acquiesce to the measures taken under sentences 2 and 3. ⁵Sentences 1 to 4 shall apply *mutatis mutandis* to a subsidiary not included in the consolidation and to a mixed holding company and its subsidiaries.

(2a) ¹If, in the supervision of a group of institutions, a financial holding group, a mixed financial holding group or a mixed holding group, BaFin requires information which has already been submitted to another competent agency, it will initially address its request for information to this competent agency. ²When supervising institutions which are subordinated to an EU parent institution pursuant to section 10a, BaFin addresses, as a matter of routine, its initial requests for information on the implementation of the approaches and measures under Directive 2013/36/EU to the agency responsible for consolidated supervision.

(3) ¹Undertakings domiciled outside Germany which are included in the consolidation must, upon request, allow BaFin to carry out the inspections permitted under this Act, in particular checks of the accuracy of the data supplied for the consolidation pursuant to section 10a (4) to (7), section 25 (2) and (3) and Articles 11 to 17 of Regulation (EU) No 575/2013 as last amended, insofar as this is both necessary to enable BaFin to perform its functions and permissible under the laws of the other state. ²This shall also apply to subsidiaries domiciled outside Germany which are not included in the consolidation.

(3a) (Repealed)

(4) ¹BaFin can send representatives to shareholders' meetings, general meetings or partners' meetings, as well as to meetings of the supervisory bodies of institutions, financial holding companies or mixed financial holding companies organised in the form of a legal person. ²They may address these meetings. ³The parties affected shall acquiesce to the measures taken under sentences 1 and 2.

(5) ¹Institutions, financial holding companies and mixed financial holding companies organised in the form of a legal person shall, at BaFin's request, call the meetings specified in subsection (4) sentence 1, call meetings of the supervisory bodies and announce subjects on which decisions are to be taken. ²BaFin can send representatives to a meeting called pursuant to sentence 1. ³They may address the meeting. ⁴The parties affected shall acquiesce to the measures taken under sentences 2 and 3. ⁵This is without prejudice to section 4.

(6) A person obliged to furnish information may refuse to do so in respect of any questions, the answers to which would place him/her or one of his/her relatives as designated in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*).

Section 44a

Cross-border information and audits

(1) ¹Legislation that hinders the transmission of data shall not apply to the transmission of data between an institution, a German asset management company, a financial undertaking, a financial holding company, a mixed financial holding company, an ancillary service provider, an e-money institution within the meaning of the Payment Services Oversight Act, a payment institution within the meaning of the Payment Services Oversight Act, or an undertaking domiciled outside Germany which directly or indirectly holds at least 20 per cent of the capital shares or voting rights in the undertaking, is a parent undertaking or can exercise a controlling influence, or between a mixed-activity holding company and its subsidiaries domiciled outside Germany, if such transmission of data is necessary to comply with the prudential provisions pursuant to Directive 2013/36/EU or Directive 2002/87/EC for the undertaking domiciled outside Germany. ²BaFin can prohibit an institution from transmitting data to a non-EEA state.

(2) ¹At the request of an agency responsible for the supervision of an undertaking domiciled in another EEA state, BaFin will check the accuracy of the data transmitted by an undertaking within the meaning of subsection (1) sentence 1 for that supervisory body pursuant to Directive 2013/36/EU, Regulation (EU) No 575/2013 or Directive 2002/87/EC, or shall permit the agency making the request, an external auditor or an expert to check such data; BaFin may, at its own diligent discretion, adopt the same procedure vis-à-vis supervisory bodies in non-EEA states provided that reciprocity is assured. ²Section 5 (2) of the Act on Administrative Procedures regarding the limits to administrative assistance shall apply *mutatis mutandis*. ³The undertakings within the meaning of subsection (1) sentence 1 shall acquiesce to the checks.

(3) ¹BaFin can request from CRR credit institutions, securities trading firms, German asset management companies, financial holding companies or mixed financial holding companies domiciled in another EEA state that it be given information that facilitates the supervision of institutions which are subsidiaries of these undertakings and which are not included in supervision on a consolidated basis by the competent agencies of the other state for reasons corresponding to those specified in Article 19 (1) or (2) letter (b) of Regulation (EU) No 575/2013.

Section 44b

Information from and inspections of the holders of major participating interests

(1) ¹The obligations vis-à-vis BaFin and the Deutsche Bundesbank to provide information and present documentation pursuant to section 44 (1) sentence 1 shall also apply to

- 1 persons and undertakings who report the intention to acquire a participating interest pursuant to section 2c or who are named as holders of major participating interests in connection with an application for authorisation pursuant to section 32 (1) sentence 2 number 6 or a supplementary report pursuant to section 64e (2) sentence 4,

- 2 the holders of a major participating interest in an institution and the undertakings controlled by them,
- 3 persons and undertakings about whom facts are known which warrant the assumption that they are persons or undertakings within the meaning of number 2, and
- 4 persons and undertakings who are associated with a person or an undertaking within the meaning of numbers 1 to 3 pursuant to section 15 of the Companies Act.

²At BaFin's request, the party obliged to present documentation shall, at its own expense, arrange for the documentation to be submitted pursuant to section 2c (1) sentence 2 to be examined by an external auditor determined by BaFin.

(2) ¹BaFin and the Deutsche Bundesbank may take measures pursuant to section 44 (1) sentences 2 and 3 in respect of the persons and undertakings specified in subsection (1) if there is evidence of grounds for a prohibition pursuant to section 2c (1b) sentence 1 numbers 1 to 6. ²The parties affected shall acquiesce to these measures.

(3) A person obliged to furnish information pursuant to subsections (1) or (2) may refuse to do so in respect of any questions, the answers to which would place him/her or one of his/her relatives as designated in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations.

Section 44c

Prosecution of unauthorised banking business and financial services

(1) ¹An undertaking about which facts are known which warrant the assumption that it conducts banking business or provides financial services without the authorisation required under this Act or without the authorisation required under Article 14 of Regulation (EU) 648/2012 or that it conducts business prohibited under section 3, a member of its governing bodies, an employee of this undertaking as well as other undertakings which are or were involved in performing such business shall, upon request, provide information about all of the undertaking's business activities and submit documentation to BaFin and the Deutsche Bundesbank. ²A member of a governing body and an employee shall, upon request, provide information even after they have left the governing body or the undertaking.

(2) ¹BaFin can carry out inspections on the premises of the undertaking as well as on the premises of the persons and undertakings obliged to provide information and present documentation pursuant to subsection (1) sentence 1 insofar as this is necessary to determine the nature or volume of the business or activities, and it may entrust the Deutsche Bundesbank with the task of carrying out such inspections. ²To this end, BaFin's staff and the staff of the Deutsche Bundesbank may enter and inspect these premises during ordinary office and business hours. ³In order to prevent imminent risks to public order and safety, they will be authorised to enter and inspect these premises also outside ordinary office and business hours, and may enter and inspect premises which also serve as living

accommodation; the basic right enshrined in Article 13 of the Basic Law (*Grundgesetz*) shall be limited in this respect.

(3) ¹BaFin's staff and the staff of the Deutsche Bundesbank may search these premises of the undertaking as well as those of the persons and undertakings obliged to provide information and present documentation pursuant to subsection (1) sentence 1. ²When conducting the search the staff may also search the persons obliged to provide information and documentation for the purposes of securing objects within the meaning of section 4. ³The basic right enshrined in Article 13 of the Basic Law shall be limited in this respect. ⁴Searches of business premises and persons shall require a judicial order except in the event of imminent danger. ⁵Searches of premises which serve as living accommodation shall require a judicial order. ⁶The court responsible shall be the local court (*Amtsgericht*) in whose area of jurisdiction the premises are located. ⁷An appeal may be lodged against the judicial decision; sections 306 to 310 and 311a of the Code of Criminal Procedure shall apply *mutatis mutandis*. ⁸A written record shall be made of the search. ⁹It must specify which official agency was responsible for carrying out the search, the reason, time and place of the search and its outcome and, if no judicial order was issued, the facts substantiating the presumption of imminent danger.

(4) BaFin's staff and the staff of the Deutsche Bundesbank may seize items which could be of importance as evidence in their investigations.

(5) ¹The parties affected shall acquiesce to measures taken pursuant to subsection (2), subsection (3) sentence 1 and subsection (4). ²Section 44 (6) shall apply.

(6) ¹The rights of BaFin and the Deutsche Bundesbank as well as the duties to cooperate and acquiesce incumbent upon the parties affected shall also apply to the undertakings and persons about which facts are known which warrant the assumption that they are involved in the initiation, conclusion or settlement of unauthorised banking business or financial services. ²If the competent authority of another state makes an appropriate request to BaFin, the aforementioned rights and duties shall also apply in respect of the undertakings and persons about which facts are known which warrant the assumption that the undertakings or persons are involved in the initiation, conclusion or settlement of banking business or financial services, which are being conducted or provided in the other state contrary to a prohibition in effect in that state.

Division 4 MEASURES IN SPECIAL CASES

Section 45

Measures to improve the adequacy of own funds and liquidity

(1) ¹If the assets and liabilities, financial position and profitability of an institution justifies the assumption that it will not be able to sustainably fulfil the requirements of Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended or of section 10 (3) and (4), section 45b (1) sentence 2, section 11 or section 51a (1) or (2) or section 51b, BaFin may order the institution to take measures to improve its own capital adequacy and liquidity, in particular

- 1 to produce 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 and present said description to BaFin and the Deutsche Bundesbank.
- 2 to review measures for improving protection against or reducing the major risks identified by the institution and thus the associated risk concentrations and to report this to BaFin and the Deutsche Bundesbank; concepts for exiting from individual business areas or severing parts of the institution or group should also be considered.
- 3 to report on suitable measures to increase the institution's tier 1 capital, own funds and liquidity to BaFin and the Deutsche Bundesbank,
- 4 to develop a concept for averting a potentially dangerous situation within the meaning of section 35 (2) number 4 and present said concept to BaFin and the Deutsche Bundesbank.

²The assumption that the institution will not be able to sustainably fulfil the requirements of Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended or section 10 (3) and (4), section 45b (1) sentence 2, section 11 or section 51a (1) or (2) or section 51b is routinely justified if

- 1 the total capital ratio for the ratio of own funds to the sum, multiplied by 12.5, of the total capital charge for credit risk, the capital charge for operational risk and the sum of the capital charges for market risk exposures including options trades pursuant to Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended or the statutory order pursuant to section 10 (1) sentence 1 or the ratios pursuant to the statutory order pursuant to section 51a (1) sentence 2, has decreased from one reporting date to the next by at least 10%, or the liquidity ratio to be calculated in accordance with the statutory order pursuant to section 11 (1) or in accordance with the statutory order pursuant to section 51b (2) sentence 1 has decreased from one reporting date to the next by at least 25% and it can be expected on the basis of this development that the minimum requirements will be undershot within the next 12 months, or
- 2 The total capital ratio for the ratio of own funds to the sum, multiplied by 12.5, of the total capital charge for credit risk, the capital charge for operational risk and the sum of the capital charges for market risk exposures including options trades pursuant to

Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended or the statutory order pursuant to section 10 (1) sentence 1 or the ratios pursuant to the statutory order pursuant to section 51a (1) sentence 2, has decreased on at least three successive reporting dates by more than 3% in each case, or the liquidity ratio to be calculated in accordance with the statutory order pursuant to section 11 (1) or in accordance with the statutory order pursuant to section 51b (2) sentence 1 has decreased on at least three successive reporting dates by more than 10% in each case and it can be expected on the basis of this development that the minimum requirements will be undershot within the next 18 months and no facts are apparent which justify the assumption that it is highly likely that the minimum requirements will not be undershot.

³In conjunction with or in place of the measures pursuant to sentence 1, BaFin may also order the adoption of measures pursuant to subsection (2) sentence 1 numbers 1 to 7 if the measures pursuant to sentence 1 do not provide sufficient assurance of sustainably ensuring compliance with the requirements of Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended or section 10 (3) and (4), section 45b (1) sentence 2, section 11 or section 51a (1) or (2) or section 51b; subsection (5) is thus to be applied accordingly.

(2) ¹If an institution's own funds do not meet the requirements laid down in Articles 24 to 386 of Regulation (EU) No 575/2013 as last amended, section 10 (3) and (4) or section 45b (1) sentence 2 or if the investment of its funds does not meet the requirements laid down in section 11 or if the liable capital of a housing undertaking with a savings facility does not meet the requirements laid down in section 51a (1) and (2) or section 45b (1) sentence 2 or the investment of its funds does not meet the requirements laid down in section 51b, BaFin can

- 1 prohibit or limit both withdrawals by the proprietors or partners and the distribution of profits,
- 2 prohibit or limit balance sheet measures that serve to offset an existing annual loss or to show a balance sheet profit;
- 3 order that the distribution of all types of profit-related disbursements on own funds instruments be dispensed with fully or in part and without replacement if they are not fully covered by an existing annual profit;
- 4 prohibit or limit lending within the meaning of section 19 (1);
- 5 order the institution to take measures to reduce risks insofar as they arise from certain types of activities and products or through the use of certain systems;
- 5a 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; this does not apply to variable components of remuneration established in a 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;

- 6 prohibit or limit variable components of remuneration to a certain proportion of the profit for the year; this does not apply to variable components of remuneration established in a 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;
- 7 order that the institution describe how and in what period of time the adequacy of own funds or liquidity of the institution is to be sustainably restored (restructuring plan) and that BaFin and the Deutsche Bundesbank are regularly informed of the progress of these measures, and
- 8 order that the institution implement one or more options from a resolution plan pursuant to section 47a.

²The restructuring plan pursuant to subsection (1) number 7 must be transparent, plausible and justified. ³For the implementation of the measures described, the plan must name concrete aims, interim targets and deadlines that can be monitored by BaFin. ⁴BaFin can, at any time, inspect the restructuring plan and the associated documents. ⁵BaFin 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 the institution does not adhere to them.

(3) ¹Subsections (1) and (2) sentence 1 numbers 1 to 3 and 5 to 7 shall apply *mutatis mutandis* to superordinated undertakings within the meaning of section 10a as well as institutions that are required to sub-consolidate pursuant to Article 22 of Regulation (EU) No 575/2013 if the consolidated own funds of the undertakings belonging to the group do not meet the requirements laid down in Articles 24 to 386 of Regulation (EU) No 575/2013 as last amended or section 45b (1). ²In the case of an institution belonging to the group making use of the exemption pursuant to section 2a (1), BaFin can, on a temporary basis, partly or fully postpone the application of this exemption with regard to the provisions of Articles 24 to 403 of Regulation (EU) No 575/2013 as last amended.

(4) (Repealed)

(5) ¹BaFin may issue the orders specified in subsections (2) and (3) only if the institution or the mixed financial holding company has failed to remedy the deficiency within a period set by BaFin. ²If this is required to prevent a foreseeable short-term deterioration in the adequacy of own funds or the liquidity of the institution or if measures pursuant to subsection (1) sentence 1 have already been taken, such orders are permissible even without prior warning with the setting of a deadline. ²Decisions on the distribution of profits shall be void insofar as they contradict an order issued pursuant to subsections (2) and (3). ⁴If provisions in contracts on own funds instruments contradict an order issued pursuant to subsections (2) and (3), no rights can be derived from them. ⁵At the same time as or subsequent to

prohibiting the payment of variable components of remuneration pursuant to subsection (2) sentence 1 number 6, BaFin can order that entitlements to confer variable remuneration components are rendered completely or partly invalid if

- 1 the institution, at the time that the payment is prohibited or within a period of two years thereafter, makes use of exceptional government intervention, including measures from the Restructuring Fund Act or the Financial Market Stabilisation Fund Act, and the preconditions for the prohibition of the payment have, by this point in time, not ceased to apply, or have done so only on the basis of said measures,
- 2 an order by BaFin pursuant to subsection (2) numbers 1 to 7 is issued or already exists at the time the payment is prohibited or within a period of two years thereafter, or
- 3 measures pursuant to section 46 or pursuant to section 48a are taken at the time the payment is prohibited or within a period of two years thereafter.

⁶Such an order may be also issued, in particular, if

- 1 the entitlements to grant variable remuneration were created on the basis of provisions of an institution's remuneration system which contradict the prudential requirements of this law for suitable and transparent remuneration systems geared towards the institution's sustainable development, or
- 2 it is to be assumed that without the granting of financial assistance by the Restructuring Fund or the Financial Market Stabilisation Fund the institution would not have been in a position to grant the variable remuneration components; if it is to be assumed that the institution would have been able to grant some of the variable remuneration components, the variable remuneration components are to be cut commensurately.

⁷BaFin can also issue orders pursuant to sentence 5 and pursuant to subsection (2) sentence 1 numbers 5a and 6 if an institution makes use of exceptional government intervention, including measures from the Restructuring Fund Act or the Financial Market Stabilisation Fund Act, and it appears necessary to issue an order for the institution to maintain a sound capital base or sound liquidity and for the early termination of government assistance. ⁸If an institution makes use of government assistance, BaFin can also completely or partially prohibit the payment of variable remuneration components to members of the governing bodies and senior managers of the institution and order the revocation of corresponding entitlements; such an order shall not be issued if the payment or the maintenance of the entitlements is justified in spite of the conditions for the prohibition being met and the existence of circumstances specified in sentence 6. ⁹Sentences 5 to 7 do not apply if the entitlements to grant variable remuneration came into existence before 1 January 2011. ¹⁰Sentence 8 does not apply if the entitlements to grant variable remuneration came into existence before 1 January 2012. ¹¹Institutions must take account of the power to issue orders pursuant to subsection (2) sentence 1 numbers 5a and 6 and the provisions in sentences 5 to 8 in corresponding contractual agreements with members of their governing

bodies and their senior management and staff members. ¹²If contractual agreements on the granting of variable remuneration run counter to an order pursuant to subsection (2) sentence 1 numbers 5a and 6 or the provisions in sentences 5 to 8, no rights can be derived from them.

(6) BaFin can also order measures pursuant to subsections (1) to (5) if an institution, the superordinated undertaking of a group of institutions, of a financial holding group or of a mixed financial holding group does not comply with the increased capital requirements ordered pursuant to section 10 (4).

(7) ¹For the implementation of orders pursuant to subsection (6) or section 10 (4), until BaFin determines that the capital requirements have been met, sections 7 to 7f, 9, 11, 11a, 14 and 15 of the Financial Market Stabilisation Acceleration Act (*Finanzmarktstabilisierungsbeschleunigungsgesetz*) shall apply *mutatis mutandis* to decisions on capital measures taken by the shareholders' meeting of the institution. ²This shall also apply if private or public bodies other than the Financial Market Stabilisation Fund make a partial or full contribution to meeting the capital requirements.

Section 45a

Measures vis-à-vis financial holding companies and mixed financial holding companies

(1) BaFin can prohibit a financial holding company at the head of a financial holding group within the meaning of section 10a or a mixed financial holding company at the head of a mixed financial holding group within the meaning of section 10a from exercising its voting rights in the superordinated undertaking and the other subordinated undertakings if

- 1 the financial holding company or the mixed financial holding company fails to transmit to the superordinated undertaking the data pursuant to Article 11 (1) sentence 2 of Regulation (EU) No 575/2013 required for consolidation pursuant to Articles 11 to 23 of Regulation (EU) No 575/2013, unless the supervisory consolidation requirements can be satisfied in some other way;
- 2 facts are known which reveal that a person who actually manages the business of the financial holding company or the mixed financial holding company is not trustworthy or does not have the professional qualifications required to manage the business.

(1a) ¹In the cases cited in subsection (1) sentence 1 number 2, BaFin can also order the superordinated undertaking of a financial holding group or a mixed financial holding group not to comply with the instructions of the financial holding company or of the mixed financial holding company if there are no possibilities under company law for removing the persons who actually manage the business of the financial holding company or of the mixed financial holding company. ²The same shall apply if such possibilities do exist but they have been used without success.

(2) ¹In the case of a prohibition pursuant to subsection (1) and at the request of BaFin, the court having jurisdiction at the domicile of the superordinated undertaking pursuant to section 10a shall appoint a trustee to whom it transfers the exercise of the voting rights. ²In exercising the voting rights, the trustee must take due account of the interests of a sound management of the undertakings concerned, in conformity with banking supervisory requirements. ³BaFin may request the appointment of a different trustee for good cause. ⁴If the prerequisites specified in subsection (1) no longer exist, BaFin shall apply for the appointment of the trustee to be revoked. ⁵The trustee shall be entitled to the reimbursement of reasonable expenses and remuneration for his/her activities. ⁶The court shall determine such expenses and remuneration at the trustee's request; an appeal on a point of law against the fixing of remuneration by the court shall not be permissible. ⁷The Federal Government will advance such expenses and remuneration; the financial holding company or the mixed financial holding company and the undertakings concerned shall be jointly and severally liable to the Federal Government in respect of its outlays.

(3) As long as the prohibition order pursuant to subsection (1) is enforceable, the undertakings concerned shall not be deemed to be subordinated undertakings of the financial holding company or the mixed financial holding company within the meaning of sections 10a and 13b.

Section 45b

Measures in the case of organisational deficiencies

(1) ¹If an institution does not have a proper business organisation within the meaning of section 25a (1), BaFin 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 order pursuant to section 25a (6) or pursuant to section 25b, order, in particular, that the institution

- 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 may establish further branches only with BaFin's approval, and
- 3 may not engage in certain types of business, in particular the acceptance of deposits, funds or securities of customers and lending pursuant to section 19 (1), or may engage in such business only to a limited extent.

²BaFin 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 10 as well as together with or additionally to setting out increased own funds requirements pursuant to section 51a (2) number 4.

(2) ¹Subsection (1) shall apply *mutatis mutandis* to the relevant superordinated undertaking within the meaning of section 10a as well as to an institution that is required pursuant to section 22 of Regulation (EU) No 575/2013 to carry out sub-consolidation, if a group of institutions or a financial holding group or a mixed financial holding group does not have a

proper business organisation in contravention of section 25a (1) and section 25b; subsection (1) sentence 1 number 3 shall apply *mutatis mutandis* provided that, instead of prohibiting or limiting lending, BaFin can lower the large exposure limits applicable to the group of institutions or financial holding group or mixed financial holding group pursuant to Articles 387 to 403 of Regulation (EU) No 575/2013 as last amended. ²If a branch of the institution in a non-EEA country does not have an appropriate business organisation or is not in a position to provide the information necessary to assess its business organisation or for inclusion in the institution's organisational structure, or if it is not supervised effectively in the non-EEA country or if the supervisory agency responsible for the branch is not prepared to engage in satisfactory cooperation with BaFin, BaFin can also limit the business activities of the branch or order its closure and liquidation.

(3) (Repealed)

Section 45c **Special representative**

(1) ¹BaFin may appoint a special representative, entrust him/her with the performance of activities at an institution and assign him/her the requisite powers. ²The special representative must be independent, trustworthy and suited to carrying out the activities entrusted to him/her to ensure the sustainability of the institution's business policy and to safeguard financial stability; in cases where the special representative assumes tasks of a senior manager or governing body, he/she must guarantee the professional qualifications required. ³As part of the appointment, he/she is authorised to request information and documentation from members of the governing bodies and employees of the institution, attend in an advisory role all meetings of the governing bodies and other bodies of the institution, enter the institution's business premises, inspect its books and papers and conduct enquiries. ⁴The governing bodies and members thereof are obliged to help the special representative conduct his/her activities. ⁵He/she is obliged to furnish BaFin with all information about any findings made in performing his/her tasks.

(2) In particular, BaFin may appoint the special representative to do the following:

- 1 to take over the activities and powers of one or more senior managers if facts are known which reveal that the senior manager(s) of the institution is/are not trustworthy or does/do not have the professional qualifications required to manage the institution.
- 2 to take over the activities and powers of one or more senior managers if the institution no longer has the requisite number of senior managers, in particular because BaFin has demanded the removal of a senior manager or prohibited that senior manager from carrying out his/her activities.
- 3 To take over the activities and powers of governing bodies of the institution entirely or in part if the conditions set out in section 36 (3) sentence 1 number 1 to 9 apply.

- 4 to take over the activities and powers of governing bodies of the institution entirely or in part if the supervision of the institution is hampered as a result of circumstances within the meaning of section 33 (3).
- 5 to take suitable measures to set up and safeguard proper business organisation including appropriate risk management if the institution has persistently contravened provisions of this Act, the Act on Building and Loan Associations, the Safe Custody Act, the Money Laundering Act, the Capital Investment Code, the Pfandbrief Act, the Payment Services Oversight Act, the Securities Trading Act, the regulations issued to implement these Acts or the orders issued by BaFin.
- 6 to monitor the institution's compliance with the orders issued by BaFin.
- 7 to draw up a restructuring plan for the institution if the conditions set out in section 45 (1) sentence 3 or (2) apply, to follow the execution of the restructuring plan and to take over the powers as defined in section 45 (2) sentences 4 and 5.
- 7a to draw up a plan pursuant to section 10 (4) sentence 6 for the institution if the requirements of section 10 (4) sentence 1 are met and the institution has not presented a suitable plan within a deadline set by BaFin, and to ensure the implementation of said plan;
- 8 to monitor measures taken by the institution to avert a danger within the meaning of section 35 (2) number 4 or of section 46 (1) sentence 1, to take measures him/herself to avert a danger or to monitor compliance with measures taken by BaFin pursuant to section 46.
- 9 to prepare a transfer order pursuant to section 48a.
- 10 to check claims for damages against members of governing bodies or former members of governing bodies if there is evidence of grounds for damage to the institution through breach of duty by said members.

(3) ¹If the special representative takes over all activities and powers of a governing body or the member of a governing body of the institution, the tasks and powers of the governing body or member of the governing body in question shall be suspended. ²The special representative may not carry out the role of one or more senior managers at the same time as that of one or more members of an administrative or supervisory body. ³If the special representative is granted only some of the powers of a governing body or a member of a governing body, this shall have no effect on the powers of the appointed governing body or member of a governing body of the institution. ⁴The activities and powers of one or more senior managers may be transferred in their entirety to the special representative only in the cases cited in (2) numbers 1, 2 and 4. ⁵His/her scope of powers of representation shall be determined by the scope of powers of representation of the senior manager to whose position he/she has been appointed. ⁶In cases where BaFin has transferred the role of senior manager to a special representative, persons or governing bodies entitled under other legislation to appoint senior managers may do so only with BaFin's approval.

(4) If BaFin transfers the activities and powers of a senior manager as defined in (2) number 1 or number 2 to a special representative, the transfer, scope of powers of representation and revocation of the transfer shall be entered officially in the commercial register.

(5) The institution's governing body that is responsible for the debarment of partners from the management and representation or for the removal of persons with powers of management or representation may, if there is good cause, apply to have the transfer of a senior manager's role to the special representative revoked.

(6) ¹The costs incurred through the appointment of the special representative, including reasonable expenses and the remuneration which he/she is to be paid, shall be borne by the institution. ²The amount of the remuneration will be determined by BaFin. ³BaFin will advance such expenses and remuneration at the special representative's request.

(7) ¹The special representative shall be liable for wilful intent and negligence. ²In the case of negligent conduct, the special representative's liability for damages shall be limited to €1 million. ³If this institution is a public limited company whose shares are admitted to trading on the regulated market, liability for damages shall be limited to €50 million.

(8) Subsections (1) to (7) shall apply *mutatis mutandis* to financial holding companies or mixed financial holding companies which are deemed to be superordinated undertakings pursuant to section 10a and to persons who actually manage the business of such financial holding companies or mixed financial holding companies.

Section 46

Measures in the case of danger

(1) ¹If there is any danger to the discharge of an institution's obligations to its creditors, especially to the safety of the assets entrusted to it, or if there are grounds for suspecting that effective supervision of the institution is not possible (section 33 (3) numbers 1 to 3), BaFin may take temporary measures to avert this danger. ²In particular, it may

- 1 issue instructions on the institution's management,
- 2 forbid the acceptance of deposits, funds or securities of customers and the granting of loans (section 19 (1)),
- 3 prohibit proprietors and senior managers from carrying out their activities, or limit the performance of these activities,
- 4 temporarily impose a ban on sales and payments by the institution,
- 5 order that the institution be closed for business with customers, and
- 6 prohibit the acceptance of payments not intended for the payment of debt vis-à-vis the institution, unless the competent compensation scheme or other guarantee scheme warrants that the obligees will be satisfied in full.

³Subject to the provisions of sentence 1, BaFin may ban or restrict payments to affiliated undertakings if these transactions are disadvantageous to the institution. ⁴Furthermore, it may stipulate that payments are only permitted under certain circumstances. ⁵Without delay, BaFin shall notify the affected supervisory authorities in the member states of the European Union, the European Central Bank and the Deutsche Bundesbank of the measures it intends to take pursuant to sentences 3 and 4. ⁶Decisions on the distribution of profits shall be invalid insofar as they contradict any order issued pursuant to sentences 1 and 2. ⁷In the case of institutions organised in a form other than that of a sole proprietorship, managers who have been prohibited from carrying out their activities shall be barred from managing and representing the institution for the duration of the prohibition. ⁸Regarding the claims arising from the employment contract or from other provisions governing the activities of the manager, the general regulations shall apply. ⁹Rights permitting a manager to participate as a partner or in other ways in decisions on measures affecting the management of the institution may not be exercised for the duration of the prohibition.

(2) ¹The competent compensation scheme or other guarantee scheme may make its commitment within the meaning of subsection (1) sentence 2 number 6 subject to the condition that incoming payments not intended for the payment of debts pursuant to subsection (1) sentence 2 number 6 to the institution are held and administered on behalf of the scheme separately from the assets held by the institution at the time when the ban on sales and payments pursuant to subsection (1) sentence 2 number 4 was imposed. ²After the issuing of the ban on sales and payments pursuant to subsection (1) sentence 2 number 4, the institution may complete the transactions in progress at the time of the issuing of the ban and enter into new transactions insofar as these are necessary for completing the former transactions, if and insofar as the appropriate deposit guarantee scheme or investor compensation scheme supplies the funds required for the purpose or undertakes to compensate the institution for any diminution in its assets resulting from these transactions as a whole, insofar as such compensation is needed for the full satisfaction of all creditors. ³Moreover, BaFin may authorise exceptions to the ban on sales and payments pursuant to subsection (1) sentence 2 number 4 insofar as this is necessary for the performance of transactions or the administration of the institution. ⁴In particular, it may order the reimbursement of payments accepted or received by the institution contrary to an order pursuant to subsection (1) sentence 2 number 6. ⁵It may establish a limit below which special representatives can authorise exceptions from the ban on sales and payments. ⁶Compulsory enforcements, attachments and temporary injunctions against the institution's assets shall not be permissible for the duration of measures pursuant to subsection (1) sentence 2 numbers 4 to 6. ⁷The provisions of the Insolvency Code relating to the protection of payment and securities transfer and settlement systems, including interoperable systems, as well as of central banks' collateral security and of financial collateral arrangements shall apply *mutatis mutandis* when ordering a measure pursuant to subsection (1) sentence 2 numbers 4 to 6. ⁸The ordering of security measures pursuant to section 21 of the Insolvency Code shall not affect the validity of the reimbursement of a payment accepted or received via a system or an intermediary or received by the institution contrary to an order pursuant to subsection

(1) sentence 2 number 6 and which BaFin has ordered to be reimbursed pursuant to sentence 4.

(3) (Repealed)

**Section 46a
(Repealed)**

**Section 46b
Insolvency petition**

(1) ¹If an institution permitted to conduct business operations in Germany or a financial holding company or mixed financial holding company which is deemed to be a superordinated undertaking pursuant to section 10a becomes insolvent or overindebted, the senior managers, the proprietor in the case of an institution operating in the form of a sole proprietorship and the persons who actually manage the business of the financial holding company or mixed financial holding company shall report this fact to BaFin without delay, enclosing informative documentation; the aforementioned persons must also provide such notification along with the corresponding documentation if the institution or the financial holding company or mixed financial holding company which is deemed to be a superordinated undertaking pursuant to section 10a is not expected to be in a position to fulfil its existing payment obligations when they fall due (imminent insolvency). ²Insofar as these persons are required under other legislation to file a petition for the initiation of insolvency proceedings in the event of insolvency or overindebtedness, the reporting requirement pursuant to sentence 1 shall replace the requirement to file such a petition. ³Insolvency proceedings over the assets of an institution or a financial holding company or mixed financial holding company which is deemed to be a superordinated undertaking pursuant to section 10a shall be initiated in the event of insolvency, overindebtedness or, under the conditions set out in sentence 5, also in the event of imminent insolvency. ⁴The petition for the initiation of insolvency proceedings over the assets of an institution or a financial holding company or mixed financial holding company which is deemed to be a superordinated undertaking pursuant to section 10a may be filed only by BaFin. ⁵In the event of imminent insolvency, however, BaFin may file the petition only with the consent of the institution and, in the case of a financial holding company or mixed financial holding company deemed to be a superordinated undertaking pursuant to section 10a, with its consent. ⁶The insolvency court must consult BaFin before appointing a suitable insolvency administrator. ⁷The court order to commence insolvency proceedings shall be specially delivered to BaFin. ⁸The insolvency court shall send BaFin all further decisions relating to the proceedings and shall inform it of the status and progress of the proceedings when requested to do so. ⁹BaFin may inspect the records relating to the insolvency proceedings.

(2) ¹If insolvency proceedings are initiated in respect of an institution which participates in a system within the meaning of section 24b (1), BaFin shall notify the European Securities and Markets Authority (ESMA), the ESRB and the agencies whose names have been communicated by the other EEA states to the European Commission without delay.

²Sentence 1 shall apply *mutatis mutandis* to system operators within the meaning of section 24b (5).

(3) ¹The insolvency administrator shall inform BaFin on an ongoing basis about the status and progress of the insolvency proceedings, in particular by transferring the reports for the insolvency court, the creditors' meeting or a committee of creditors. ²BaFin may also request additional information and documents relating to the insolvency proceedings.

Section 46c

Insolvency law periods and liability issues

(1) The periods to be calculated pursuant to sections 88 and 130 to 136 of the Insolvency Code from the date on which the request to open the insolvency proceedings was filed shall be calculated from the day on which a measure pursuant to section 46 (1) is ordered.

(2) ¹It is assumed that any payments that were made by the institution between a BaFin order pursuant to section 46 (1) sentence 2 numbers 4 to 6 and the insolvency petition and that are permitted under section 46 do not disadvantage the institution's creditors and are compatible with the diligence of a prudent businessman. ²BaFin acts dutifully in its activities if, in exercising its powers, it could reasonably assume that it could achieve the aims of the Act based on appropriate information. ³This is without prejudice to section 4 (4) of the Act Establishing the Federal Financial Supervisory Authority.

Section 46d

Notification of the other EEA states with regard to reorganisation measures

(1) ¹BaFin shall notify the competent authorities in the other EEA states before it orders reorganisation measures, in particular measures pursuant to section 46, to be carried out at a CRR credit institution. ²If this is not possible, the competent authorities must be informed immediately after such measures have been ordered. ³The same shall apply insofar as measures pursuant to section 46 are taken against the branches of an undertaking within the meaning of section 53 domiciled in a non-EEA state. ⁴In this case, BaFin shall inform the competent authorities in the other EEA states in which the undertaking has established further branches. ⁵This shall be without prejudice to the provisions of section 8 (3) to (7).

(2) ¹Reorganisation measures which prejudice the rights of third parties in a host member state and against which legal remedies may be sought must be announced immediately without an accompanying statement of reasons in the Official Journal of the European Union and in at least two national newspapers of the host member states in the official language or languages of the relevant EEA states. ²This announcement must stipulate which agency or authority has received the accompanying explanatory memorandum, the subject matter of and legal basis for the decision, the time limits for legal remedies including deadlines, BaFin's address as the authority which would decide if an objection were filed and the address of the competent administrative court. ³Such announcement is not a prerequisite for validity.

(3) ¹Reorganisation measures within the meaning of subsections (1) and (2) are measures pursuant to both section 46 and section 6 (3) by means of which the financial situation of a CRR credit institution is to be reinforced or restored and which could prejudice the existing rights of third parties in a host member state of the EEA, including measures which allow a suspension of payments or which serve to bolster the reorganisation measures ordered by supervisory authorities in the EEA. ²Reorganisation measures are to be designated as such. ³With due regard for the reorganisation measures, sections 336, 337, 338, 340 and 351 (2) of the Insolvency Code shall apply as appropriate to contracts on the use or acquisition of an immovable object, to employment contracts and employment relationships, to set-offs, to repurchase agreements within the meaning of section 340b of the German Commercial Code, to netting agreements and contracts for novation as well as to the rights in rem of third parties unless otherwise stipulated in this Act.

(4) ¹Subsections (1) and (2) shall not apply if and insofar as only the rights of persons involved in the internal corporate structure as well as those of the management and shareholders of a CRR credit institution may be prejudiced in one of these capacities. ²Notification and announcement pursuant to subsections (1) and (2) are not necessary in the case of CRR credit institutions which do not operate on a cross-border basis.

(5) ¹BaFin shall support reorganisation measures ordered by the authorities of the home state to be carried out at a CRR credit institution domiciled in another EEA state. ²If it considers it necessary to carry out remedial measures at a CRR credit institution domiciled in another EEA state, it shall inform the competent authorities of this state accordingly.

Section 46e

Insolvency proceedings in EEA states

(1) ¹The relevant authorities or courts of the home member state shall be solely responsible for initiating insolvency proceedings over the assets of a CRR credit institution within the EEA. ²If another state of the EEA is the home member state of a CRR credit institution and insolvency proceedings are initiated there over the assets of this institution, then these proceedings shall be recognised irrespective of the provisions of section 343 (1) of the Insolvency Code.

(2) Secondary insolvency proceedings pursuant to section 356 of the Insolvency Code and any other territorial insolvency proceedings pursuant to section 354 of the Insolvency Code are not permissible with regard to CRR credit institutions which are domiciled in another EEA state.

(3) ¹The office of the insolvency court must immediately forward the order to initiate proceedings to BaFin, which in turn shall promptly inform the competent authorities in the other EEA host member states that proceedings have been initiated. ²Notwithstanding the announcement envisaged by section 30 of the Insolvency Code, the insolvency court must publish extracts from the court order to initiate proceedings in the Official Journal of the European Union and in at least two national newspapers of the host member states in which

the credit institution concerned has a branch or provides services. ³This publication is to be preceded by the form pursuant to section 46f (1) of this Act.

(4) ¹BaFin can request information about the status of the insolvency proceedings from the insolvency court and the insolvency administrator at any time. ²It is obliged, upon the request of the competent authorities in other EEA states, to inform the said authorities about the status of the insolvency proceedings.

(5) ¹If BaFin files a petition for the initiation of insolvency proceedings over the assets of a branch of an undertaking domiciled in a non-EEA state, it shall, without delay, notify the competent authorities in the EEA states in which the undertaking has a further branch or provides services. ²The notification must also include information about the contents and legal validity of the permission pursuant to section 32. ³The persons and bodies involved shall endeavour to take a concerted approach.

Section 46f

Notification of creditors in insolvency proceedings

(1) ¹On issuing the court order to initiate proceedings, the office of the insolvency court shall send the creditors a form bearing the heading "Invitation to lodge a claim and submit observations relating to a claim. Time limits to be observed" in all of the official languages of the EEA. ²The form shall be published in the Federal Gazette by the Federal Ministry of Justice and shall contain the following information in particular:

- 1 the time limits which are to be observed and the penalties for breaching these time limits.
- 2 the body empowered to accept the lodgement of claims or observations relating to claims.
- 3 other measures which have been laid down.
- 4 how important it is for creditors whose claims are preferential or secured in rem to lodge these claims and the extent to which they must do so.

(2) ¹Creditors whose place of habitual abode, residence or domicile is in another EEA state can lodge their claims in the official language or one of the official languages of that state. ²The lodgement of claims must bear the heading "Lodgement of claim and submission of observations relating to claims" in German, ie "Anmeldung und Erläuterung einer Forderung". ³Upon request, the creditor must provide a translation of the lodgement of claim and submission of observations relating to claims, which is to be certified by a person authorised to do so in the state relevant to sentence 1.

(3) The insolvency administrator must regularly inform the creditors about developments in the insolvency proceedings in an appropriate form.

Section 46g
Moratorium, suspension of banking and stock exchange business

(1) If there is reason to fear that credit institutions may encounter financial difficulties which are likely to pose grave dangers to the economy as a whole, and particularly to the proper functioning of the general payment system, the Federal Government may, by way of a statutory order,

- 1 grant a credit institution an extension of time to discharge its obligations and order that compulsory enforcements, attachments and temporary injunctions against the credit institution as well as the initiation of insolvency proceedings over the credit institution's assets are not permissible for the duration of the extension;
- 2 order that credit institutions be temporarily closed for business with customers and that they may neither make nor accept payments and credit transfers connected with such customer business; it may limit this order to certain types or categories of credit institutions and to particular types of banking business;
- 3 order that stock exchanges within the meaning of the Stock Exchange Act (*Börsengesetz*) be temporarily closed.

(2) Before taking measures pursuant to subsection (1), the Federal Government must consult the Deutsche Bundesbank.

(3) If the Federal Government takes measures pursuant to subsection (1), it must specify by way of a statutory order the legal consequences of these measures for prescribed periods and deadlines in the fields of civil law, commercial law, company law, bill of exchange law, cheque law and procedural law.

Section 46h
Resumption of banking and stock exchange business

(1) ¹For the period after a temporary closure of credit institutions and stock exchanges pursuant to section 46g (1) numbers 2 and 3, the Federal Government, after having consulted the Deutsche Bundesbank, may issue by way of a regulation provisions on the resumption of payments, credit transfers and stock market business. ²In particular, it may rule that the withdrawal of credit balances is subject to temporary restrictions. ³Such restrictions may not be imposed in respect of sums of money accepted after a temporary closure of credit institutions.

(2) The statutory orders issued pursuant to subsection (1) and section 46g (1) shall become inoperative three months after the date of their promulgation if they have not already been rescinded.

Division 4a MEASURES TO PREPARE AND CONDUCT RECOVERY AND RESOLUTION ACTIONS

Section 47

Recovery plan and resolution planning at credit institutions and financial groups with the potential to pose a systemic risk

(1) ¹Credit institutions regarded as potentially posing a systemic risk by BaFin shall prepare a recovery plan. ²The recovery plan shall specify which of the measures to be taken by the credit institution can be used to restore the financial stability of the credit institution if there is a major deterioration in its financial situation and if this deterioration may lead to a going-concern risk if suitable countermeasures are not taken promptly by the credit institution (crisis event). ³If the credit institution regarded as potentially posing a systemic risk is part of a group of institutions or financial holding group (referred to in this subsection as financial groups) or if the financial group with the potential to poses a systemic risk, sentence one shall apply under the condition that only the superordinated undertaking must prepare a recovery plan which applies to the entire financial group. ⁴A credit institution has the potential to pose a systemic risk if its going-concern risk could trigger a systemic risk within the meaning of section 48a (2) number 1 in conjunction with section 48b (2). ⁵A financial group has the potential to pose a systemic risk if the going-concern risk of at least one group company can trigger a systemic risk; the provisions of sections 48o and 48p shall apply *mutatis mutandis*. ⁶In consultation with the Deutsche Bundesbank, BaFin shall classify credit institutions with the potential to pose a systemic risk on the basis of a qualitative and quantitative analysis, taking particular account of the size of the credit institution, its domestic and cross-border business activities, its interconnectedness with the German and international financial system and the replaceability of the services and the financial infrastructure it provides.

(2) ¹BaFin shall be responsible for resolution planning. ²Resolution planning shall comprise the following tasks:

- 1 assessing the resolvability of credit institutions and financial groups pursuant to section 47d
- 2 removing obstacles to resolvability pursuant to section 47e
- 3 creating resolution plans pursuant to sections 47f and 47g for credit institutions and financial groups with the potential to pose a systemic risk
- 4 exercising the powers pursuant to section 47h and
- 5 preparing measures imposed by BaFin pursuant to sections 48a to 48s.

Section 47a
Design of recovery plans

(1) The structure of the recovery plan shall depend on the size, complexity and interconnectedness of the credit institution or the financial group as well as the type, scale and complexity of the business model and the associated risk.

(2) The recovery plan shall contain the following major components, in particular

- 1 a summary of the main content of the recovery plan, including an assessment of the credit institution or the financial group's ability to restructure
- 2 a strategic analysis of the credit institution or the financial group, which shall contain the following:
 - (a) a presentation of its corporate structure and business model,
 - (b) a list of its material business activities and critical business activities,
 - (c) a description of its internal and external connective structures;
- 3 a list of recovery options available to the credit institution or the financial group in order to restore financial stability in the event of a crisis;
- 4 a description of the conditions and the key steps for implementing recovery options. This shall also include a description of the consequences of the recovery options for employees and their representatives;
- 5 a list of the impediments which limit or prevent the implementation of the recovery options and a description of whether and how these impediments can be overcome;
- 6 a list of severe stress scenarios that could trigger a crisis, and their impact on the credit institution or the financial group; the stress scenarios should contain both systemic events and events that affect the individual credit institution and that reflect the risk potential specific to the credit institution or group;
- 7 the definition of indicators that allow the prompt implementation of recovery options intended to restore the financial stability of the credit institution or the financial group so that it can overcome a future crisis by itself without stabilisation measures from the public sector; in the outline, it may be assumed that public or private sector owners and private or public security systems will provide support measures to overcome a crisis if there is agreement from the owners or security systems or if support measures are the normal procedure in similar cases;
- 8 an examination of the effectiveness and feasibility of the recovery plan using the stress scenarios;
- 9 a communication and information plan which describes the internal and external communication arrangements regarding the implementation of each of the identified recovery options and

10 a list of preparatory measures that the institution has taken or intends to take to improve the implementation of the recovery plan.

(3) The recovery plan must also fulfil the following requirements:

- 1 implementing the recovery options must allow the financial stability and viability of the credit institution or the financial group to be restored and safeguarded in the long term.
- 2 it must be possible to implement recovery options effectively in a crisis without causing any significant adverse effect on the financial system.

(4) ¹In agreement with the Deutsche Bundesbank, BaFin shall require credit institutions which it has classified as potentially posing a systemic risk pursuant to section 47 (1) to present a recovery plan within a period not exceeding six months. ²At the request of the credit institution, BaFin may extend the deadline by up to six months. ³The relevant credit institutions shall update their recovery plan at least once a year or following changes to the legal or organisational structure of the credit institution, its business activities, its financial situation or the general risk situation that may have a substantial impact on the recovery plan or that make it necessary to amend the plan for other reasons. ⁴BaFin may order the relevant credit institutions to update their recovery plans more frequently. ⁵Sentences 1 to 3 shall apply *mutatis mutandis* to the superordinated undertaking of a financial group with the potential to pose a systemic risk.

(5) All members of the management board within the meaning of section 1 (2) shall be responsible for creating, implementing and updating the recovery plan as well as implementing it in a crisis, irrespective of the internal allocation of responsibilities.

(6) ¹Within this subsection, material business activities shall be taken to mean activities which may significantly affect the assets, finances and earnings of the credit institution or financial group. ²Material business activities shall also include activities which, from the point of view of the credit institution or the financial group, could lead to considerable losses in revenue or profit, considerable losses or a considerable loss in equity value in the event of a failure. ³Critical business activities within the meaning of this subsection are business activities which, if interrupted or not resolved in an orderly manner, could have a significant negative impact on other undertakings in the financial sector, on the financial markets or on the general confidence of investors and other market participants in the functioning of the financial system.

Section 47b
Measures in the case of deficient recovery plans

(1) Credit institutions with the potential to pose a systemic risk shall submit their recovery plans to BaFin and the Deutsche Bundesbank. They shall also submit them after every update.

(2) ¹If BaFin, in agreement with the Deutsche Bundesbank, does not consider the recovery plan submitted to meet the requirements of section 47a (1) to (3), it shall inform the relevant credit institution of the shortcomings of the recovery plan. ²In this case, BaFin shall require the credit institution to submit a revised plan within a time frame of three months. ³Moreover, the credit institution shall specify how the deficiencies identified by BaFin have been rectified.

(3) If the relevant credit institution fails to submit a revised recovery plan or if the revised recovery plan does not rectify the identified deficiencies, BaFin may order the credit institution to take all measures to rectify the deficiencies within a time limit specified by BaFin.

(4) ¹If the deficiencies identified point to impediments that prevent or significantly impair recovery in the event of a crisis (impediments to recovery), BaFin may demand, in particular, that the necessary measures are taken to

- 1 ease the reduction of the credit institution's risk profile,
- 2 enable recapitalisation measures to be taken promptly,
- 3 allow corrections to be made to the funding strategy or
- 4 change the corporate governance procedures to allow recovery options from the recovery plan to be implemented promptly and rapidly.

²Before ordering a measure, BaFin shall examine whether the measure is needed because the obstacles to recovery that were identified can no longer be rectified promptly in the event of an imminent risk situation and there is thus a risk that, should a crisis occur, a going-concern risk to the credit institution could no longer be effectively avoided. It shall also examine whether the burdens associated with the measure are proportionate to the systemic risk caused by the going-concern risk. ³The credit institution shall first be given the opportunity to remedy the situation. ⁴Measures pursuant to sentence 1 shall be harmonised with potential measures pursuant to section 47e (3) and (4).

(5) Subsections 1 to 4 shall apply *mutatis mutandis* to the superordinated undertaking of a financial group with the potential to pose a systemic risk.

Section 47c Resolution unit

(1) ¹At BaFin, resolution planning shall be carried out by a separate organisational unit independently of the ongoing banking supervision tasks (resolution unit). ²The resolution unit is also responsible for the application to conduct the reorganisation procedure pursuant to section 7 of the Credit Institution Reorganisation Act, for exercising the associated powers and for their preparation, as well as for the tasks of BaFin pursuant to sections 48a to 48s. ³Tasks relating to the creation and evaluation of recovery plans and the ordering of measures pursuant to section 47b may also be transferred to the resolution unit.

(2) ¹Mutual support and an unimpeded exchange of information must be assured between the resolution unit and the areas of ongoing supervision. ²Section 7 shall apply *mutatis mutandis* to cooperation with the Deutsche Bundesbank pursuant to this subsection.

(3) BaFin shall provide the Financial Market Stabilisation Agency with updates on the current status of resolution planning.

Section 47d Assessment of resolvability

(1) BaFin shall continuously assess whether a credit institution or a financial group can be resolved.

(2) ¹A credit institution or financial group shall be considered able to be resolved if BaFin, after consulting the Financial Market Stabilisation Agency, reaches the conclusion that the credit institution or the members of the financial group that are credit institutions

1 can complete regular insolvency proceedings without creating systemic risk within the meaning of section 48b (2) or

2 can be resolved using a resolution tool in a manner that allows the resolution objectives listed in section 47f (2) to be achieved in compliance with the principles set out in section 47f (4).

²The use of a resolution tool refers, in particular, to the issue of a transfer order pursuant to sections 48a to 48s, including other measures pursuant to this Act that are ordered in addition to the transfer order.

(3) ¹The assessment of the resolvability of a credit institution or financial group must also take into account the feasibility of a resolution if a resolution is required to prevent or eliminate systemic risk. ²In this case, it is necessary to examine, in particular

1 the extent to which material business activities and critical business activities can be allocated to certain legal entities of the financial group;

2 the extent to which legal and corporate structures are designed to allow the separation of the material business activities and critical business activities and

- especially to ensuring this separation is not prevented or impeded by internal interconnections;
- 3 the extent to which arrangements are in place to ensure there are sufficient resources in terms of staff, infrastructures, liquidity and capital to support and maintain material business activities and critical business activities in the event of going-concern risk;
 - 4 the extent to which
 - (a) the credit institution or member of the financial group, as the recipient or provider of services, has concluded service level agreements which may affect the business activities of the credit institution, members of the financial group or third parties, and
 - (b) such service level agreements are fully enforceable in the event of a going-concern risk or the resolution of the credit institution or a member of the financial group, regardless of whether the credit institution or a member of the financial group is the recipient or provider of the service;
 - 5 the extent to which the credit institution or a member of the financial group has a procedure for transferring the services received or provided on the basis of service level agreements in the event of a spin-off of material business activities or critical business activities;
 - 6 the extent to which provisions have been made to ensure permanent access to financial market infrastructures;
 - 7 whether the technical and organisational resources are sufficient to ensure that BaFin receives correct and complete information about the material business activities and the critical business activities at any time;
 - 8 whether the credit institution or the members of the financial group are able, using their technical and organisational resources, to provide BaFin with the key information needed to effectively resolve the credit institution or the financial group at any time, even under rapidly changing conditions;
 - 9 the extent to which the credit institution or members of the financial group have subjected their technical and organisational resources to a stress test based on scenarios specified or approved by BaFin;
 - 10 the extent to which the credit institution or the members of the financial group can guarantee that their technical and organisational resources remain operational, both for the affected credit institution or the members of the affected financial group as well as, in the event that the material business activities are separated from the critical business activities, for a potential resolution authority which takes over the credit institution or a member of the financial group;
 - 11 the extent to which the credit institution or the members of the financial group have in place adequate procedures to ensure that BaFin receives or can obtain information that is needed to identify the depositors and the amounts covered by the deposit guarantee schemes;

- 12 the extent to which group surety, guarantee or security agreements are affected and hedging transactions are made at market conditions, the extent to which the risk management systems are reliable with regard to such agreements and the extent to which such agreements increase the risk of contagion within the financial group;
- 13 the extent to which the legal structure of the financial group, the number of legal entities, the complexity of the group structure, including tax and balance sheet links or intercompany agreements, or the difficulty of gearing business activities to legal entities that limit or could limit resolvability;
- 14 the extent to which, if the assessment relates to a mixed financial holding company, the resolution of undertakings belonging to the financial group that involve credit institutions, financial services institutions or other financial undertakings, may have a negative impact on the parts of the financial group that operate outside the financial sector;
- 15 whether foreign authorities have tools that are suited to supporting the use of resolution tools and resolution powers pursuant to this Act and what options exist for coordinated measures between BaFin and authorities of this kind abroad;
- 16 whether the resolution tools and resolution powers can be used, given the structure of the credit institution or the financial group;
- 17 the extent to which the group structure allows BaFin to resolve the entire financial group or one or more of its entities without creating systemic risk;
- 18 in what way the use of resolution tools and resolution powers at the credit institution or members of the financial group can be made easier or in which cases they do not need to be used at all;
- 19 the likelihood of achieving the objective of the resolution through the use of resolution tools and resolution powers given the potential impact on creditors, counterparties, customers and employees, permissions and licences as well as potential measures by authorities outside of Germany;
- 20 whether it is possible to adequately evaluate the impact that the resolution of the credit institution or financial group, in particular the use of resolution tools or resolution powers, could have on the financial system and the confidence of the financial markets;
- 21 whether spillover effects to other financial market participants can be contained through the use of resolution tools and resolution powers;
- 22 whether the resolution of the credit institution or the financial group, in particular the use of resolution tools or resolution powers, could materially affect the operation of financial market infrastructures, and
- 23 the extent to which, in the event that only a resolution pursuant to subsection (2) number 2 comes into question, the losses of shareholders of the institution being resolved and its creditors can be borne.

(4) ¹BaFin will review the resolvability assessment annually and update it if necessary. ²It can perform additional assessments, particularly if there have been changes at the credit institution or financial group or in the markets in which the credit institution or financial group is active which may influence the result of the assessment.

(5) ¹The resolvability of a financial group that falls within the scope of subsection (1), that also operates outside Germany and, in the event of a going-concern risk, could also jeopardise the stability of the financial system outside of Germany, shall be assessed in agreement with the resolution authorities of the affected EEA states or the affected non-EEA states (resolution college). ²When assessing the resolvability of a credit institution that is not a member of a cross-border financial group but that also operates outside of Germany, BaFin will decide whether such agreement is necessary or helpful. ³Section 8e shall apply *mutatis mutandis*.

Section 47e

Powers to remove impediments to resolvability

(1) ¹If in the course of its assessment pursuant to section 47d, and after consultation with the Deutsche Bundesbank, BaFin identifies impediments to resolvability at a credit institution with the potential to pose a systemic risk, it will notify the credit institution or the superordinate undertaking of a financial group with the potential to pose a systemic risk of this fact. ²The notification shall specify which impediments to resolvability have been identified.

(2) ¹The notification shall specify a suitable period of time in which the recipient must propose measures to remove the specified impediments. ²After consulting the Deutsche Bundesbank, BaFin will assess whether the proposed measures are suitable for effectively removing the impediments. ³BaFin may involve responsible German and foreign authorities if it considers their involvement to be necessary or helpful. ⁴Section 47d (5) shall apply *mutatis mutandis*.

(3) ¹Should BaFin conclude that the impediments cannot be effectively removed through the proposed measures, it may demand alternative measures. ²When ordering a measure pursuant to sentence 1, BaFin will verify

- 1 that the measure is consistent with the resolution objectives listed in section 47f (2),
- 2 whether the measure is necessary because the impediments to resolution can no longer be overcome promptly in the event that a specific risk occurs and, owing to the impediments to resolution, there is a risk that systemic risk can no longer be avoided effectively should a crisis occur, and
- 3 that the burdens associated with the measure are proportionate to the otherwise imminent systemic risk and its potential impact.

(4) ¹Under the conditions set out in subsection (3), BaFin may demand, in particular, that

- 1 service level agreements on the continuation of material business activities or critical business activities are concluded within the financial group or with third parties,
- 2 the credit institution or, in the case of a financial group, one or more members of the financial group, limit the maximum individual and aggregate risk positions,
- 3 extraordinary or regular requirements to provide information already in place or newly created by BaFin are adhered to,
- 4 certain assets are sold,
- 5 existing or planned business activities are limited or discontinued,
- 6 changes are made to the legal or operational structures of the institution or the financial group in order to reduce complexity and ensure that material business activities or critical business activities can be separated legally and financially from other functions through the use of resolution tools or resolution powers,
- 7 a parent company, a parent financial holding company or an EU parent financial holding company is established,
- 8 measures to increase loss sustainability are implemented, and
- 9 if the situation at the credit institution involves a subsidiary of a mixed holding company which establishes a mixed holding company to control the institution of a separate financial holding company in order to facilitate the resolution of the credit institution and to prevent the use of resolution tools and resolution powers from having a negative impact on the parts of the financial group that operate outside the financial sector.

²BaFin shall only demand the measures specified in numbers 4 to 6 after the recipient has been given another opportunity to propose measures to remove the impediments and BaFin does not consider that these measures are suited to effectively removing the impediments.

(5) ¹BaFin may, at its discretion, involve the resolution college. ²BaFin will inform the recipient of the notification of the measures pursuant to subsection (1) and will request that he or she implement these measures within a specified period of time. ³BaFin will inform the Deutsche Bundesbank of the measure and that it has been imposed.

Section 47f

Creation of a resolution plan

(1) ¹BaFin will create a resolution plan for each credit institution with the potential to pose a systemic risk, is not part of a financial group with the potential to pose a systemic risk and is subject to supervision on a consolidated basis by BaFin pursuant to the Banking Directive. ²If the assessment of resolvability pursuant to section 47d has revealed obstacles to the creation of a resolution plan, these obstacles must first be removed pursuant to section 47e.

(2) ¹The resolution plan shall take into account the resolution objective of preventing or making it easier to eliminate systemic risk. ²Insofar as they are consistent with the objective

of preventing or making it easier to eliminate systemic risk, the following additional objectives shall be taken into consideration

- 1 ensuring the continuity of critical business activities;
- 2 preventing contagion to other financial market participants;
- 3 endeavouring to keep the cost of a resolution as low as possible for the general public and to protect public funds;
- 4 protecting depositors as defined in Directive 94/19/EC and investors as defined in Directive 97/9/EC, and
- 5 protecting customers' funds and assets.

(3) ¹The resolution plan shall envisage the use of resolution tools in the event that the conditions laid out in section 48a (2) are met with regard to the relevant credit institution.

²The resolution plan shall take into account various scenarios, including the event that the going-concern risk and its causes are limited to the individual credit institution or that the going-concern risk occurs during a period of general financial instability or systemic events.

³The resolution plan shall only envisage financial support in the form of the funding mechanisms created under the Restructuring Fund Act (*Restrukturierungsfondsgesetz*).

(4) The resolution plan shall be drawn up in accordance with the following principles:

- 1 reliance on extraordinary public financial support shall be avoided; the resources of the restructuring fund should be used efficiently and sparingly.
- 2 market discipline shall be maintained on the financial markets.
- 3 the shareholders of the institution under resolution shall be called upon first to sustain losses.
- 4 after the shareholders, the creditors of the institution under resolution shall shoulder the losses pursuant to the regulations specified in sections 48a to 48s insofar as this is compatible with the resolution objectives specified in subsection (2).
- 5 no creditor shall bear a greater loss than he or she would do were the institution to be liquidated through regular insolvency proceedings. In this context, at the time a resolution instrument is used, it is permissible to calculate a global insolvency rate based on the capital gaps identified at this point in time.
- 6 all senior managers at the credit institution under resolution shall be excluded from the management board unless BaFin is of the opinion that the manager did not contribute to the emergence of a going-concern risk or the exclusion of the senior manager would further jeopardise the stability of the credit institution.
- 7 all senior managers at the credit institution under resolution shall participate in the losses to the extent of their individual responsibility for the failure of the institution pursuant to civil and criminal law.

(5) ¹The resolution plan shall contain the following elements:

- 1 a summary of the main components of the resolution plan,
- 2 a summary of the material changes that have taken place in the credit institution since the plan was first created or last updated,
- 3 a strategic analysis that includes the following aspects, in particular
 - (a) a detailed description of the organisational structure, including a list of the legal entities
 - (b) information about the ownership structure
 - (c) information about where the seat of the management board and information about the permissions and licences of each material legal entity,
 - (d) the allocation of material business activities and critical business activities to the legal entities,
 - (e) details of the main business partners and an analysis of the impact of the failure of these business partners on the situation of the relevant significant legal entity,
 - (f) details of all financial market infrastructures to which the relevant significant legal entity is linked directly or indirectly, including the allocation to the material business activities and the critical business activities,
 - (g) details of the technical and organisational resources of the relevant significant legal entity, including information about their actual and legal framework, particularly concerning licences, service level agreements and maintenance,
 - (h) information about the relevant responsible senior manager and about the contact person for the relevant significant legal entity who reports to the management board and
 - (i) all major agreements between the relevant significant legal entity and third parties which could be terminated directly or indirectly by the use of a resolution tool, a resolution power, an insolvency or a contractually defined pre-insolvency event, and information as to whether the consequences of the termination may impair the use of a resolution tool or a resolution power; the same shall apply if the third party cannot terminate the agreement, but can trigger other potentially negative consequences, such as a penalty, for the relevant significant legal entity;
- 4 comments on how material business activities and critical business activities can be legally and financial separated to the extent required in order to ensure their continuity in the event that the credit institution is resolved,
- 5 an estimated time frame for the implementation of all major parts of the plan,
- 6 an outline of the resolvability assessment carried out pursuant to section 47d,
- 7 a description of the measures required pursuant to section 47e to remove impediments to resolvability,

- 8 a description of the procedure for calculating the value and marketability of the material business activities, the critical business activities and the assets of the relevant significant legal entity in the event of resolution,
- 9 a detailed description of the regulations intended to ensure that the information, estimates, analyses and reports that must be made available pursuant to section 47h are up to date and can be accessed by BaFin at any time,
- 10 explanations as to how the various resolution measures can be financed, taking into account the requirements pursuant to subsection (3) sentence 3,
- 11 a detailed description of the various resolution strategies that may be applied in the different scenarios within the meaning of section 47d (2) number 9,
- 12 comments on critical interconnections
- 13 a description of the options for maintaining access to financial market infrastructures,
- 14 if relevant, an outline of the involvement and cooperation of foreign authorities and
- 15 a plan for communicating with the media and the public.

²BaFin may add further components to the resolution plan.

(6) ¹The resolution plan shall be presented for comment to the Deutsche Bundesbank and Financial Market Stabilisation Agency. ²It shall be updated at least once a year and shall also be revised and updated if necessary following material changes to the legal or organisational structure of the credit institution, its business activities or its financial situation that may have a major impact on the feasibility of the plan. ³The same shall apply if the assessment of resolvability or the review of this assessment pursuant to section 47d (4) reveals that changes to the recovery plan are needed.

(7) ¹Recovery plans concerning institutions that fall within the scope of subsection (1), also operate abroad and could jeopardise the stability of a foreign financial markets in the event of a going-concern risk should be drawn up in a resolution college. ²Section 8e shall apply *mutatis mutandis*.

(8) BaFin may dispense with the creation of a resolution plan pursuant to subsection (1) if

- 1 the credit institution with the potential to pose a systemic risk is part of a group with the potential to cause a systemic risk which, although not supervised on a consolidated basis by BaFin pursuant to the Banking Directive, is considered by BaFin, particularly through its participation in a resolution college, to have a resolution plan drawn up by a third party that sufficiently covers the event of the going-concern risk of the credit institution with the potential to pose a systemic risk and
- 2 BaFin sufficiently documents its assessment.

Section 47g

Group resolution plans

(1) ¹BaFin will create a resolution plan (group resolution plan) for each credit institution with the potential to pose a systemic risk that is subject to supervision on a consolidated basis by BaFin pursuant to the Banking Directive. ²BaFin shall consult the Deutsche Bundesbank and the Federal Agency for Financial Market Stabilisation before completing the group resolution plan.

(2) The group resolution plan shall cover the following members of the financial group

- 1 if the financial group with the potential to pose a systemic risk involves a group of institutions, the superordinate undertaking within the meaning of section 10a (1) sentence 1 and all subordinated undertakings within the meaning of section 10a (1) sentence 2, regardless of whether they potentially pose a systemic risk in isolation
- 2 if the financial group with the potential to pose a systemic risk involves a financial holding group, the financial holding company and all subordinated undertakings within the meaning of section 10a (1) sentence 2, regardless of whether they potentially pose a systemic risk in isolation

(3) ¹The group resolution plan envisages the use of resolution tools in the event that the conditions laid out in section 48o or section 48p are met. ²Section 47f (1) sentence 2, subsections (2), (3) sentence 2 and 3, subsections (4), (6) and (7) shall apply *mutatis mutandis* to group resolution plans.

(4) ¹The content of the group resolution plan shall be based on section 47f (5). ²Furthermore, in the group resolution plan, BaFin shall, in particular

- 1 focus on describing cooperation and coordination with foreign agencies and on who is to bear the burden internationally if the financial group or one of its members is jeopardised as a going concern. In particular, it shall provide information about the responsible supervisory and resolution authorities of the relevant significant legal entity and the potential funding of the various resolution measures as well as, if appropriate, approaches to dividing responsibility for funding between funding sources in several countries;
- 2 outline the measures to be taken by the financial group as a whole or by part of the financial group in the scenarios defined;
- 3 analyse the extent to which resolution tools and resolution powers can be applied, exercised and mutually recognised as part of international cooperation.

Section 47h

Duties to cooperate; authority to issue orders

(1) ¹Credit institutions and financial groups shall provide BaFin immediately with all information that BaFin requires in the course of the resolution planning process. ²If necessary, BaFin may request that a particular piece of information is accompanied by a summary analysis.

(2) ¹BaFin may also request estimates, analyses, reports and other types of cooperation if it deems these necessary for resolution planning purposes. ²In particular, BaFin may demand that the relevant credit institution or the superordinate undertaking of the relevant financial group draft parts of the documents to be drawn up for resolution planning and make them available to BaFin.

(3) BaFin is not obliged to reimburse the costs and expenses incurred by the credit institution or the superordinate undertaking of the financial group as a result of subsections (1) and (2).

(4) ¹The Federal Ministry of Finance, acting in consultation with the Deutsche Bundesbank, may issue by way of a statutory order more detailed provisions on the nature, scope, timing and form of the duties to cooperate, which may also include the regular provision of information, insofar as this is necessary to the fulfilment of BaFin's tasks. ²It may delegate this authority by way of a statutory order to BaFin, provided that statutory orders of BaFin are issued in agreement with the Deutsche Bundesbank. ³The central associations of the institutions shall be consulted before the statutory order is issued.

Section 47i

Confidentiality and exchange of information

(1) ¹Subject to the provision in subsection (3), BaFin shall treat as confidential the results of the resolution planning, the next steps following the announcement of the results of the resolvability assessment and the information, estimates, analyses and reports made available to it in the context of resolution planning. ²In particular, the resolution plans do not need to be announced to the credit institution or the financial group.

(2) Due to their nature, the recovery plans and the results of the resolution planning must be treated as confidential within the meaning of section 99 (1) sentence 2 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*).

(3) ¹BaFin shall be entitled to make the information, estimates, analyses and reports that it has received through resolution planning available to

- 1 the Federal Ministry of Finance, the Deutsche Bundesbank, the Federal Agency for Financial Market Stabilisation and the steering committee of the Federal Agency for Financial Market Stabilisation,

- 2 within supervisory colleges, the relevant members and the competent agencies of other EEA states and of non-EEA states with which BaFin collaborates within supervisory colleges pursuant to section 8e,
- 3 authorities whose opinions BaFin considers necessary or helpful pursuant to section 47 e (2) sentence 3,
- 4 a deposit guarantee scheme or an investor compensation scheme.

²In the cases specified in numbers 2 and 3, the conditions set out in section 9 (1) sentences 6 to 8 shall apply.

(4) The credit institution shall treat recovery plans as confidential and only transmit them to third parties which are involved in the creation and implementation of the recovery plan.

Section 47j
Legal protection

¹Findings and measures by BaFin pursuant to section 47b (3) and pursuant to section 47e against a credit institution or a member of a financial group can be contested by the credit institution or the relevant member of the financial group in question within one month of their announcement before the Higher Administrative Court responsible for the seat of BaFin in Frankfurt am Main. ²An objection procedure is not conducted.

Section 48
(Repealed)

Division 4b **MEASURES VIS-À-VIS CREDIT INSTITUTIONS IN THE EVENT OF RISKS TO THE STABILITY OF THE FINANCIAL SYSTEM**

Section 48a
Transfer order

(1) BaFin can, in accordance with the provisions set out below, order that a credit institution's assets, including its liabilities, be transferred to an existing legal entity (absorbing legal entity) through spin-off.

(2) ¹A transfer order may only be issued if

- 1 the credit institution's viability as a going concern is jeopardised (going-concern risk), putting the stability of the financial system at risk (systemic risk) and
- 2 the systemic risk as a result of the going-concern risk cannot be eliminated in an equally safe manner in any other way than through a transfer order.

²BaFin, the Financial Market Stabilisation Agency and the Steering Committee are also acting in issuing and enforcing a transfer order if they may, given reasonable recognition of the circumstances evident at the time of their action, assume that the legal basis for their action is given. ³This is without prejudice to section 4 (4) of the Act Establishing the Federal Financial Supervisory Authority.

(3) ¹The transfer order shall be issued in agreement with the Steering Committee within the meaning of section 4 of the Financial Market Stabilisation Fund Act if the transfer order requires, or could require, financial assistance from the Restructuring Fund. ²The Steering Committee's decision shall be prepared by the Financial Market Stabilisation Agency.

(4) BaFin shall be justified in transmitting to the Steering Committee and the Financial Market Stabilisation Agency any information pertinent to the decision; section 9 (1) sentence 5 shall apply *mutatis mutandis*.

Section 48b

Going-concern and systemic risk

(1) ¹Going-concern risk is the danger of the credit institution collapsing as a result of insolvency if no corrective measures are taken. ²Going-concern risk is suspected if

- 1 the available common equity tier 1 capital pursuant to Article 50 of Regulation (EU) No 575/2013 represents less than 90% of the required common equity tier 1 capital;
- 2 the available own funds pursuant to Article 72 of Regulation (EU) No 575/2013 represent less than 90% of the required own funds;
- 3 the liquid assets available to the institution in a maturity band defined through the statutory order pursuant to section 11 (1) sentence 2 represent less than 90% of the callable payment obligations or
- 4 facts are known which warrant the assumption that a shortfall pursuant to numbers 1, 2 and 3 will occur if no corrective measures are taken; this is the case, in particular, if a loss may be anticipated based on the institution's earnings situation, as a result of which the conditions of numbers 1, 2 or 3 would be met.

³If the credit institution is subject to particular own funds requirements pursuant to section 10 (3) and (4) or section 45b (1) sentence 2, these must be taken into consideration when examining whether the conditions of sentence 2 numbers 1, 2 and 4 are met. ⁴The same applies when determining whether the conditions of sentence 2 numbers 3 and 4 for extraordinary liquidity requirements pursuant to section 11 (2) are met.

(2) ¹Systemic risk is present if there is concern that the credit institution's going-concern risk could have a significantly negative impact on other financial sector undertakings, on the financial markets or on the general confidence investors and other market players have in the proper functioning of the financial system. ²Particular account shall be taken of:

- 1 the nature and scope of the credit institution's liabilities to other institutions and other financial sector undertakings,
- 2 the scope of the deposits received by the institution,
- 3 the nature, volume and composition of the risks entered into by the institution as well as the conditions on the markets on which such positions are traded,
- 4 interconnectedness with other financial market participants,
- 5 the conditions on the financial markets, in particular the consequences which market participants expect the institution's collapse to have on other financial sector undertakings, on the financial market and on the confidence investors and other market players have in the proper functioning of the financial system,
- 6 the replaceability of the services and technical systems provided by the institution,
- 7 the complexity of the business transacted by the institution with other market participants,
- 8 the nature, scope and complexity of the institution's cross-border transactions and the replaceability of the cross-border services and technical systems.

(3) BaFin shall assess, after consulting the Deutsche Bundesbank, whether there is going-concern and systemic risk within the meaning of subsections (1) and (2) and shall document the joint assessment in writing.

Section 48c

Deadlines; issuing the transfer order

(1) ¹Provided the risk situation permits it, BaFin can, before issuing a transfer order, set the credit institution a deadline within which the credit institution must present a sustainable plan indicating in what way the going-concern risk can be averted (recovery plan). ²The recovery plan must indicate the measures that will be used to

- 1 avert the going-concern risk within six weeks of presenting the recovery plan (implementation deadline) and
- 2 ensure capital adequacy and sufficient liquidity in the long term.

³Where the recovery plan includes capital injections or liquidity increases, it must be credibly demonstrated that there is a reasonable prospect of successful implementation of the measures. ⁴If the institution fails to present, within the set deadline, a recovery plan which meets the requirements of sentence 2, or if it does not credibly demonstrate the capital injections or liquidity increases envisaged in the recovery plan, violates provisions in an already-presented recovery plan, or if the recovery plan turns out to be unsuitable or not capable of being implemented by the deadline, BaFin, provided the risk situation permits it, may set the credit institution a final deadline for eliminating the going-concern risk; the deadline to be set has to take into account the fact that the institution had already had the opportunity to avert the going-concern risk.

(2) ¹A reorganisation plan transmitted in accordance with the regulations of the Credit Institution Reorganisation Act (*Kreditinstitute-Reorganisationsgesetz*) is considered to be a recovery plan that satisfies the requirements of subsection (1) if, with due consideration of the time schedule, there is no doubt that the reorganisation plan submitted is suitable to avert the going-concern risk in a timely manner and that the submitted plan can be accepted, confirmed and implemented in a timely manner. ²BaFin can order a transfer even once reorganisation procedure has been initiated unless there is no doubt that the reorganisation procedure is suitable to avert the going-concern risk in time and that the submitted plan can be accepted, confirmed and implemented in a timely manner.

(3) ¹The transfer order may be issued only if the absorbing legal entity agrees to the transfer. ²The permission must make reference to a draft of the transfer order that has the same contents and requires notarisatation.

(4) If the transfer order is to specify that the credit institution should be granted capital shares in the absorbing legal entity in return for the transfer (section 48d (1) sentence 2) and if this requires approval from the shareholders' meeting at the absorbing legal entity, the transfer order cannot be issued until the required decisions have been taken by the shareholders' meeting and can no longer be contested and potentially reversed.

(5) ¹The transfer order shall not specify a legal entity as the absorbing legal entity if

- 1 the legal entity is not constituted in the form of a legal person,
- 2 the legal entity has its head office outside Germany,
- 3 the legal entity does not have two senior managers pursuant to the articles of association or articles of incorporation,
- 4 facts are known which reveal that a senior manager is not trustworthy or does not have the professional qualifications required to manage the institution,
- 5 facts are known which reveal that the holder of a major participating interest in the legal entity or, if this is a legal person, a legal representative or representative pursuant to the articles of association or articles of incorporation or, in the case of a commercial partnership, a partner is not trustworthy or, for other reasons, fails to satisfy the requirements to be set in the interests of sound and prudent management,
- 6 the tier 1 capital of the absorbing legal entity within the meaning of Article 26 (1) letters (a) to (e) of Regulation (EU) No 575/2013 undershoot €5 million or
- 7 the object of the legal entity pursuant to the articles of association or articles of incorporation or its assets, financial or earnings situation does not allow it to take on the credit institution and maintain it as a going concern.

²If the credit institution is constituted in the legal form of a corporation, the absorbing legal entity shall be constituted in the same legal form.

(6) ¹The transfer order shall be sent to the competent works council at the same time as the credit institution is informed. ²The transfer order shall also be announced to the absorbing legal entity. ³It must be promptly published in the electronic Federal Law Gazette. ⁴The publication shall also contain information on the declaration of consent of the absorbing legal entity and on the decisions to increase capital pursuant to subsection (4).

Section 48d

Compensation/consideration; equalisation liability

(1) ¹Under the transfer order, the credit institution receives compensation if the overall value of the items to be transferred is positive. ²Compensation consists of capital shares in the absorbing legal entity. ³If granting shares is unreasonable for the absorbing legal entity or risks defeating the purpose of the transfer order, compensation shall be determined in cash.

(2) ¹Compensation must be proportionate to the value of the transferred assets at the time at which the transfer order is issued. ²Any support from the restructuring fund or government bodies that was provided or promised to avoid or overcome going-concern risk shall not be counted in the credit institution's favour. ³Central bank operations that are concluded at normal terms and conditions do not represent support within the meaning of sentence 2.

(3) ¹An expert selected and appointed by the court at the request of the Financial Market Stabilisation Agency shall verify the adequacy of the compensation. ²Section 10 (1) sentence 3, subsections (2) to (5) and section 11 of the Transformation Act (*Umwandlungsgesetz*) shall apply *mutatis mutandis*. ³The auditor shall submit a written report on the results of his examination. ⁴The audit report shall be sent to the credit institution, the absorbing legal entity, BaFin and the Financial Market Stabilisation Agency. ⁵It shall conclude with a statement on whether the compensation was appropriate at the time at which the transfer order was issued. ⁶If the audit report comes to the conclusion that the compensation was adequate, BaFin shall, in agreement with the Financial Market Stabilisation Agency, confirm the compensation laid down in the transfer order. ⁷If not, it shall, in agreement with the Financial Market Stabilisation Agency, redefine the amount of compensation within two weeks of receiving the audit report, taking due account of the results of the report. ⁸The adequacy of the newly defined compensation shall be verified pursuant to sentences 1 to 5; the auditor who conducted the initial audit shall be considered as having been appointed to conduct this audit.

(4) ¹Where a conclusive and reliable valuation of the assets to be transferred is not possible before the transfer order is issued, the transfer order can be based on a preliminary valuation. ²In this case, a preliminary compensation shall be determined and the final valuation shall be carried out at a later date. ³Section 48c (4) shall apply *mutatis mutandis* subject to the proviso that the compensation must be set at double the preliminary compensation. ⁴The adequacy of the preliminary compensation pursuant to subsection (3) sentence 1 does not need to be verified. ⁵The final valuation shall be conducted within four months of announcing the transfer order to the credit institution. ⁶In the event of transfer-back orders pursuant to section 48j or partial transfers pursuant to section 48k, a final valuation

shall be conducted within two months of the announcement of the last order to the credit institution without prejudice to the deadline pursuant to sentence 5. ⁷The compensation to be determined based on the final valuation shall be verified pursuant to subsection (3).

(5) ¹If the compensation consists of capital shares in the absorbing legal entity and the latter must carry out a capital increase to create these capital shares, the auditor appointed pursuant to subsection (3) sentence 1 shall also verify and explain whether the amount of transferred assets equals the lowest issue price for the capital shares to be transferred. ²This verification shall be conducted even if preliminary compensation has been determined pursuant to subsection (4) and its adequacy is not verified. ³Once the compensation has been confirmed pursuant to subsection (3) sentence 6, the capital increase is considered to have been conducted.

(6) ¹Where the aggregate value of the assets to be transferred is negative, the transfer order shall stipulate that the credit institution must compensate the absorbing legal entity in cash ²The maturity and seniority of the compensation liability shall be based on the maturity and seniority of the liabilities involved in the spin-off. ³In the case of various maturities or seniority levels, the ratio of the liabilities with different maturity or seniority to each other is key. ⁴Subsections (2) to (4) shall apply *mutatis mutandis*.

Section 48e **Contents of the transfer order**

(1) The transfer order must contain at least the following information:

- 1 the name or the company and domicile of the absorbing legal entity,
- 2 the information that the entirety of the credit institution's assets including its liabilities shall be transferred to the absorbing legal entity,
- 3 the point in time as of which the actions of the transferring legal entity are considered to have been carried out on behalf of the absorbing legal entity (spin-off cut-off date),
- 4 information pursuant to subsection (2) or subsection (3) on the compensation or compensation liability
- 5 the proviso that individual assets, liabilities or legal relationships can be transferred back to the credit institution conducting the spin-off by means of a special order pursuant to section 48j (1) and (2),
- 6 the information that the absorbing legal entity has agreed to the transfer in the above-described form.

(2) Where the transfer order stipulates that the credit institution shall be granted compensation in the form of capital shares in the absorbing legal entity, it must contain information

- 1 on the issuance and number of these capital shares in the absorbing legal entity,

- 2 on the aggregate value ascribed to the spun-off assets at the time at which the transfer order was issued and on which the spin-off is based, in particular the determination of the issuance and number of the capital shares granted to the credit institution as compensation, and
- 3 on the methods and assumptions used to determine the value pursuant to number 2, taking into consideration the provisions of section 48d (2).

(3) ¹In the case of section 48d (1) sentence 3, the information pursuant to subsection (2) number 1 shall be replaced by the level of the cash payment to be paid. ²Where an equalisation liability is to be paid, the information pursuant to subsection (2) number 1 is to be replaced by the amount of this liability. ³Where preliminary compensation or an equalisation liability is laid down, the information pursuant to subsection (2) numbers 2 and 3 shall be replaced by a reference to the preliminary nature of the compensation and the procedure used to determine the final compensation or equalisation liability.

Section 48f **Conducting the spin-off**

(1) ¹The spin-off is conducted for absorption based on the transfer order and the declaration of consent of the absorbing legal entity. ²A spin-off contract, a spin-off report or a spin-off decision on the part of the shareholders' meeting of the credit institution or the absorbing legal entity are not required.

(2) ¹The spin-off shall be based, as the closing balance sheet, on the annual balance sheet from the credit institution's last audited annual accounts, unless an audited balance sheet based on a later cut-off date is available for the credit institution; to this end, BaFin may demand that the institution provide an audited balance sheet based on a later cut-off date. ²The annual balance sheets of the absorbing legal entity may also list, as acquisition costs within the meaning of section 253 (1) of the Commercial Code, the values listed in the credit institution's closing balance sheet.

(3) ¹The credit institution and the absorbing legal entity must promptly report the spin-off for entry into the register in their respective domicile. ²Besides the closing balance sheet, a copy of the transfer order and the notarised declaration of consent of the absorbing legal entity pursuant to subsection (1) sentence 1 shall be attached to the reports.

(4) ¹The entries shall be made promptly. ²The lodging of an appeal or bringing of actions against the transfer order, the capital increase or the entry of the spin-off or the capital increase at the absorbing legal entity shall not preclude entry.

(5) ¹If the credit institution or the absorbing legal entity neglects to report for entry in a register as stipulated under subsection (3) or is late in doing so, the Financial Market Stabilisation Agency may submit the report on behalf of those required to register. ²In this case, the registration cannot be conducted without the permission of the Financial Market Stabilisation Agency.

(6) ¹If the members of the management and supervisory bodies help prepare and carry out the spin-off, this shall not represent a breach of duty towards the credit institution and its shareholders. ²This shall be without prejudice to the obligation to pursue the institution's rights pursuant to section 48r (1) and (2). ³When deciding whether to lodge an appeal with a view to preventing the issuance or the enforcement of a transfer order, the consequences should be considered which the delay would have if the going-concern risk became public at the same time.

Section 48g

Entry into force and effects of the spin-off

(1) The spin-off shall become effective with the announcement of the transfer order to the credit institution and the absorbing legal entity.

(2) Once the spin-off becomes effective,

- 1 the assets, liabilities and legal relationships earmarked by the transfer order (spin-off objects) are transferred to the absorbing legal entity and
- 2 the credit institution has a right to the compensation or compensation liability.

(3) ¹Compensation in cash (section 48d (1) sentence 3) is due once the spin-off becomes effective. ²Where the compensation is made up of capital shares in the absorbing legal entity and a capital increase is required to create the capital shares, the absorbing legal entity must promptly undertake the action required to have the capital increase registered and carried out. ³Section 48f (5) shall apply *mutatis mutandis* to the registration of the capital increase.

(4) Rights similar to those of shareholders but without a voting right are, where in doubt, adjusted to the situation created as a result of the spin-off.

(5) Section 613a of the German Civil Code shall apply *mutatis mutandis*.

(6) Where the absorbing legal entity does not have the authorisation to pursue the transferred business required pursuant to section 32, the transfer order shall be regarded as authorisation in favour of the absorbing legal entity in the scope of the authorisation granted to the credit institution.

(7) ¹Debt relationships may not be terminated for the sole reason of their transfer. ²The transfer order and the spin-off therefore do not result in a termination of debt relationships. ³Contractual provisions to the contrary shall be invalid. ⁴Sentences 1 to 3 shall not apply

- 1 to reasons to given notice on or terminate a debt relationship which are not limited to the fact that the debt relationship was transferred or the preconditions for its transfer were present,
- 2 to reasons to given notice on or terminate a debt relationship for reasons related to the absorbing legal person, and

- 3 where the provisions of section 48k (2) sentences 1 to 3 are not fulfilled in the case of a partial transfer.

Section 48h

Liability of the credit institution; insolvency remoteness of spin-off

(1) ¹The credit institution is liable for the liabilities included in the spin-off only in the amount of the sum which the creditor would have received had the credit institution been wound up/resolved and no spin-off taken place. ²There is liability only if the creditor cannot obtain satisfaction from the absorbing legal entity.

(2) The spin-off shall be without prejudice to any insolvency proceedings relating to the credit institution's assets; it cannot be contested either within or outside of such insolvency proceedings.

Section 48i

Objects/assets subject to foreign law

(1) Where spin-off assets are subject to foreign law under which the legal effects of the transfer order shall not apply, the credit institution is obligated to push for the action which is, under the foreign law, required for devolution of title to the absorbing legal entity.

(2) ¹In the cases referred to in subsection (1), the institution and the absorbing legal entity are obliged to treat the affected spin-off assets as though the devolution of title had been conducted according to the provisions of the foreign jurisdiction. ²The credit institution manages the affected spin-off assets for the account and in the interest of the absorbing legal entity, whose instructions it must follow. ³The absorbing legal entity absolves the credit institutions from any expenses incurred in this connection, while the credit institution must pass on any proceeds from the administration of the asset to the absorbing legal entity.

(3) ¹Assets whose transfer pursuant to subsection (1) the foreign jurisdiction does not recognise do not belong to the insolvency estate in insolvency proceedings relating to the credit institution's assets. ²Creditors of claims against the credit institution whose transfer pursuant to subsection (1) is not recognised by the foreign jurisdiction cannot assert their claims against the credit institution. ³Such insolvency proceedings shall be without prejudice to claims and obligations pursuant to subsections (1) and (2). ⁴Legal acts that serve to fulfil them shall not be subject to appeal either within or outside of these insolvency proceedings.

(4) Where there is doubt as to whether the legal effects of the transfer order apply abroad, subsections (1) to (3) shall apply *mutatis mutandis*.

Section 48j
Partial transfer back

(1) ¹BaFin can, within four months of the spin-off becoming effective, order that individual assets, liabilities or legal relationships (spin-off assets) be transferred back to the credit institution conducting the spin-off (transfer-back order). ²Further transfer-back orders may be issued within the deadline pursuant to sentence 1.

(2) ¹The transfer-back order must be announced to the absorbing legal entity and the credit institution conducting the spin-off and becomes effective once it has been announced to both. ²Section 48f subsections (3) to (5) shall apply *mutatis mutandis*; a copy of the transfer-back order replaces the documents listed in sections 48f subsection (3) sentence 2. ³The spin-off asset affected by a transfer-back order is considered to have remained on the books of the credit institution conducting the spin-off from the outset.

(3) ¹Spin-off assets for which financial collateral within the meaning of section 1 (17) has been provided and the financial collateral provided for them are exempted from a transfer back pursuant to subsection (1) subject to the provisions of subsection (5). ²Sentence 1 shall also apply to spin-off assets incorporated in a system within the meaning of section 1 (16) or by central banks or which are subject to an eligible netting agreement pursuant to section 196 (295) of the Solvency Regulation. ³The choice of the other spin-off assets is based on their significance to averting the system risk emanating from the credit institution in an effective and cost-efficient manner. ⁴Where they are equally significant to averting the systemic risk emanating from the credit institution in an effective and cost-efficient manner, the selection of liabilities is based on the ranking relevant in insolvency proceedings relating to the credit institution's assets. ⁵Sentences 3 and 4 shall also apply to the decision on an only partial transfer back of liabilities.

(4) ¹The credit institution is liable for the liabilities included in the spin-off only in the amount of the sum which the creditor would have received had the credit institution been wound up/resolved and no spin-off taken place. ²There is liability only if the creditor cannot obtain satisfaction from the credit institution.

(5) ¹A debt relationship which was transferred to the absorbing legal entity during enforcement of the spin-off and which the contractual party says or claims to give notice on or terminate in contravention of section 48g (7) can be transferred back to the credit institution within ten business days of the absorbing legal entity receiving the declaration; any claims that would arise from the termination of such a debt relationship are considered to have been transferred back along with it. ²Where the debt relationship is included in an eligible netting agreement pursuant to articles 195, 196 and 295 of Regulation (EU) No 575/2013 as last amended, all debt relationships between the institution and the contractual included in the netting agreement, the netting agreement and any claims that would result from the application of the netting agreement shall be considered to have been transferred back along with it. ³The same applies to framework agreements encompassing the debt relationships included in the netting agreement. ⁴The deadline of four months pursuant to

subsection (1) shall not apply. ⁵The counterparty must be informed of the transfer back promptly.

(6) If financial assistance from the Restructuring Fund is required, or could be required, in connection with the transfer order, BaFin shall make the selection pursuant to subsection (3) sentence 4 and the decision pursuant to subsection (5) in consultation with the Financial Market Stabilisation Agency.

(7) The provisions in section 48g (2), (4) and (5) shall apply *mutatis mutandis*.

Section 48k

Partial transfer

(1) ¹Notwithstanding section 48e (1), the transfer order may stipulate that only part of the assets, liabilities and legal relationships shall be transferred to the absorbing legal entity (partial transfer). ²In this case, notwithstanding section 48e (1) number 2, the transfer order need only list those spin-off assets that are covered by the spin-off; alternatively, it may list those spin-off assets that will remain with the institution.

(2) ¹Spin-off assets for which financial collateral has been provided within the meaning of section 1 (17) may only be transferred together with the financial collateral, and financial collateral may only be transferred with the spin-off assets they collateralise. ²Spin-off assets that are included in a system within the meaning of section 1 (16) or a central bank system may not be transferred without the collateral provided for them and collateral may not be transferred without the spin-off assets they collateralise. ³Assets that are subject to an eligible netting agreement pursuant to articles 195, 196 and 295 of Regulation (EU) No 575/2013 as last amended may only be transferred in their entirety and together with the netting agreement and the framework agreements in which the debt relationships covered by the netting agreements are directly or indirectly included; section 48j (5) sentence 2 shall apply *mutatis mutandis*. ⁴Section 48j (3) sentences 3 to 5 and (6) shall apply *mutatis mutandis* to the selection of the assets to be transferred.

(3) ¹The absorbing legal entity is liable for liabilities not included in a transfer order pursuant to subsection (1) only in the amount of the sum which the creditor would have received had the credit institution been resolved and no spin-off taken place. ²There is liability only if the creditor cannot obtain satisfaction from the credit institution.

(4) ¹Where assets whose use the absorbing legal entity requires in order to maintain the business units transferred to it as a going concern remain with the credit institution, the credit institution must grant the absorbing legal entity sole or shared use against an appropriate fee until the absorbing legal entity can replace the assets in question. ²Insolvency proceedings initiated over the assets of the institution shall be without prejudice to claims pursuant to sentence 1 or arising from a contract concluded based on an obligation pursuant to sentence 1; the conclusion of the contract and its fulfilment shall not be subject to appeal.

(5) ¹BaFin can issue further transfer orders (follow-up orders) within four months of a spin-off based on a transfer order pursuant to subsection (1) becoming effective. ²The follow-up orders do not restart the deadline pursuant to sentence 1. ³Section 48a (3) shall apply *mutatis mutandis*.

Section 48l Measures at the credit institution

(1) ¹Once the transfer order becomes effective, BaFin may revoke the credit institution's authorisation if the credit institution is no longer able to maintain its business in line with the provisions of this act. ²This shall be without prejudice to section 35.

(2) ¹As long as the viability of the business units transferred to the absorbing legal entity as a going concern is not jeopardised and as long as BaFin does not determine that the restructuring goal (section 48m (1) sentence 2) at the absorbing legal entity has been achieved, BaFin can instruct the credit institution to exercise the voting rights to which it is entitled in the shareholders' meeting of the absorbing legal entity in a certain manner; the absorbing legal entity shall also be informed of these instructions. ²The institution may not be instructed to approve

- 1 a capital reduction on the part of the absorbing legal entity which does not serve to cover losses,
- 2 a capital increase where the issue amount or the minimum price at which the shares will be issued is inappropriately low,
- 3 a merger, demerger, spin-off or asset transfer pursuant to the Transformation Act, where the compensation or indemnity to which the institution is entitled is inappropriately low, nor
- 4 the expulsion of the credit institution from the circle of shareholders.

³Following an instruction pursuant to sentence 1 does not represent a breach of duty of the members of authorised representative bodies towards the credit institution and its shareholders. ⁴This shall be without prejudice to the obligation to pursue the credit institution's rights pursuant to section 48m (4) and (5) and section 48r (3).

(3) As long as the viability of the business units transferred to the absorbing legal entity as a going concern is jeopardised and until such going-concern risk has been averted on a long-term basis, the credit institution may not, without prior written permission from BaFin, dispose of the capital shares in the absorbing legal entity to which it is entitled.

(4) Where a petition for the initiation of insolvency proceedings over the assets of the credit institution looks likely to be rejected for the sole reason that the credit institution's assets will probably not cover the costs of the proceedings, the absorbing legal entity is obliged to make the advance payment required to initiate proceedings.

(5) ¹BaFin shall appoint a special auditor at the credit institution to examine whether the credit institution can claim for damages against members of governing bodies or former members of governing bodies for breach of due diligence standards. ²Section 45c (6) and sections 144 and 145 of the Companies Act shall apply *mutatis mutandis*.

Section 48m

Measures at the absorbing legal entity

(1) ¹On demand, the absorbing legal entity shall promptly provide BaFin with information on all circumstances required to assess whether the business units transferred to the absorbing legal entity can be restructured. ²The ability to restructure within the meaning of sentence 1 is the realistic possibility of creating an assets, financial or earnings situation that ensures the long-term competitiveness of the transferred undertaking (restructuring objective). ³Where necessary to verify the information provided pursuant to sentence 1, BaFin may demand the submission of documentation and surrender of copies.

(2) ¹To enable or implement a transfer order, sections 7 to 7b, 7d, 7e, 8 to 11, 12 (1) to (3) sections 14, 15 and 17 to 19 of the Financial Market Stabilisation Acceleration Act shall apply *mutatis mutandis* to decisions on capital measures taken by the shareholders' meeting of the absorbing legal entity until BaFin determines that the restructuring objective has been reached. ²This shall also apply if other private or public bodies make a contribution to achieving the restructuring objective or averting the going-concern risk. ³Section 48d (2) sentence 3 shall apply *mutatis mutandis*.

(3) ¹A decision pursuant to subsection (2) shall be reported promptly to the register of the domicile of the absorbing legal entity. ²The resolution, insofar as it is not manifestly void, shall be entered in the commercial register without delay. ³Actions or applications for rulings against the decision or its entry shall not preclude entry into the register. ⁴Section 246a (4) of the Companies Act shall apply *mutatis mutandis*. ⁵The same applies to decisions on utilising an authorisation to draw down approved capital created pursuant to subsection (2).

(4) ¹If the institution votes in favour of a measure pursuant to subsection (2) to comply with instructions issued by BaFin pursuant to section 48l (2), this shall not prevent action from being brought against the decision. ²In the case of a capital increase, the action may also be based on the fact that the issue price for the new capital shares is inappropriately low. ³In the event of a capital reduction, the action may also be based on the fact that the capital reduction does not serve to offset losses in the agreed scope. ⁴Where the action is justified, but the measure has already been entered in the trade register pursuant to subsection (3), the claim to compensation to which the institution is entitled pursuant to subsection (3) sentence 4 shall be fulfilled by issuing capital shares provided the damage suffered by the institution consists in an economic dilution of its capital share in the absorbing legal entity.

(5) ¹Subsections (2), (3) and (4) sentences 1 and 4 shall apply *mutatis mutandis* to decisions on changes to the articles of association or incorporation, the conclusion or termination of

company agreements or measures pursuant to the Transformation Act. ²Where the credit institution, to comply with instructions pursuant to section 48l (2), votes in favour of a measure pursuant to the Transformation Act, it may also base the action against the decision on the fact that the compensation or indemnity granted to the institution is not appropriate.

(6) ¹Where the absorbing legal entity has, in order to avert the going-concern risk or to achieve the restructuring objective, been granted support from the Restructuring Fund or another form of support, BaFin may, until the restructuring objective has been achieved,

- 1 prohibit payouts to the shareholders of the absorbing legal entity,
- 2 prohibit payouts to the holders of other own funds items that are, according to contractual provisions, tied to specified targets being met provided the relevant targets would not have been achieved without the support, or
- 3 prohibit payments to creditors if their claims could not, owing to a subordination agreement, have been met following a hypothetical repayment of the support.

²Giving notice on or buying back the affected own funds components and debt instruments as well as balance sheet measures which could cause the objectives relevant pursuant to sentence 1 number 2 to be achieved are also considered to be a payout within the meaning of sentence 1. ³Where a payout is prohibited pursuant to sentence 1 number 2, the relevant objectives are considered not to have been met. ⁴Sentence 1 shall not apply to payouts on capital shares which were granted to the Restructuring Fund or the Financial Market Stabilisation Fund in connection with a support payment, and to payments on such claims of the Restructuring Fund that were created in connection with the government support payment. ⁵Section 48d (2) sentence 3 shall apply *mutatis mutandis*. ⁶The injection of own funds or liquidity by private third parties in order to avert going-concern risk or achieve the restructuring objective shall be deemed equivalent to support payments made by the Restructuring Fund.

(7) If the restructuring objective cannot be achieved or can only be achieved at unreasonable economic terms and if the undertaking can be resolved without jeopardising the stability of the financial system, BaFin may, in consultation with the Financial Market Stabilisation Agency, demand that the absorbing legal entity set up a liquidation plan showing that, and in what way, the undertaking being maintained as a going concern by the absorbing legal entity can be resolved in an orderly manner.

(8) BaFin may declare a liquidation plan established pursuant to subsection (7) to be binding.

(9) ¹BaFin is entitled to take the measures necessary to implement a liquidation plan that is binding pursuant to subsection (8). ²In particular, BaFin shall be authorised to issue instructions to the absorbing legal entity. ³Where senior managers fail to guarantee proper implementation of the plan, BaFin may, pursuant to section 45c, transfer senior managers' powers to a special representative who is suitable to ensure proper implementation of the plan.

Section 48n Information

BaFin shall, pursuant to section 46d (1) and (2), notify the competent authorities in the other EEA states that it has issued a transfer order or ordered measures pursuant to section 48l (1) and (2) and section 48m (6) to (9).

Section 48o

Measures relating to superordinated undertakings of groups of institutions

(1) ¹Where the own funds available to a group of institutions cover less than 90% of the own funds required pursuant to Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended, an order pursuant to section 10 (3) and (4), the legal regulation pursuant to section 51a (1), an order pursuant to section 51a (2) or section 45b (1) sentence 2, subsection (2) or if it is to be expected that such a capital shortfall will occur if no corrective measures are taken, BaFin may, in accordance with sections 48a to 48k, also issue a transfer order to the superordinated undertaking. ²Sections 48l to 48n shall apply *mutatis mutandis*.

(2) ¹Where the viability of an institution belonging to a group or the superordinated undertaking as a going concern is at risk and this threatens to place the viability of other undertakings belonging to the group at risk as a going concern, BaFin may, pursuant to sections 48c to 48k, also issue a transfer order to the superordinated undertaking, if the danger to the other undertakings belonging to the group is associated with systemic risk.

²Subordinated undertakings domiciled outside Germany are suspected of being at risk if

- 1 the own funds or liquidity requirements applicable in the country of domicile are not met or
- 2 insolvency proceedings or other proceedings with similar impact provided for under the jurisdiction of the country of domicile are imminent and cannot be averted based on intra-group transactions without jeopardising other undertakings belonging to the group.

³If BaFin has issued a transfer order pursuant to sentence 1, sections 48l to 48n shall apply *mutatis mutandis*.

Section 48p

Measures at financial holding groups and mixed financial holding groups

¹Where the own funds available to a financial holding group or mixed financial holding group cover less than 90% of the own funds required pursuant to Articles 92 to 386 of Regulation (EU) No 575/2013 as last amended, an order pursuant to section 10 (3) and (4), the legal regulation pursuant to section 51a (1), an order pursuant to section 51a (2) or section 45b (1) sentence 2, subsection (2) or if it is to be expected that such a capital shortfall will occur if no corrective measures are taken, BaFin may, in accordance with sections 48a to 48k, also

issue a transfer order to the financial holding company or mixed financial holding company. ²Sections 48l to 48n shall apply *mutatis mutandis*. ³Section 48o (2) shall apply *mutatis mutandis*.

Section 48q **Measures at financial conglomerates**

¹Where the own funds available to a financial conglomerate cover less than 90% of the own funds available pursuant to section 10b (1) or if it is to be expected that such a capital shortfall will occur if no corrective measures are taken, BaFin may, in accordance with sections 48a to 48k, also issue a transfer order to the financial conglomerate and to the mixed financial holding company. ²Sections 48l to 48n shall apply *mutatis mutandis*. ³Section 48o (2) shall apply *mutatis mutandis*.

Section 48r **Legal protection**

(1) ¹The transfer order and the transfer-back order may be contested in the first and last instance by the credit institution within one month before the Higher Administrative Court responsible for the seat of BaFin in Frankfurt am Main. (2) ²The back-transfer order may be contested in the first and last instance by the absorbing legal entity within one month before the Higher Administrative Court responsible for the seat of BaFin in Frankfurt am Main. ³If the back-transfer order is contested by both the credit institution and the absorbing legal entity, the proceedings shall be merged. ⁴No objection procedure is carried out in either case. ⁵Covenants with regard to a transfer order or back-transfer order shall not be subject to appeal separately.

(2) ¹Where it is claimed that the transfer order does not provide for adequate compensation for the takeover of the spin-off assets by the absorbing legal entity, the action can only be aimed at having the compensation adjusted. ²Sentence 1 shall apply *mutatis mutandis* to claims that the compensation liability imposed on the institution pursuant to section 48d (6) is inappropriately high or that it should be replaced by compensation. ³If the transfer order provided for provisional compensation and the compensation ultimately determined differs from the provisional compensation at the expense of the absorbing legal entity, the absorbing legal entity may also take action to have the compensation adjusted. ⁴Sentence 3 shall apply *mutatis mutandis* for legal remedies against a judgement which adjusts the compensation to the detriment of the absorbing legal entity.

(3) ¹Subsection (1) shall apply *mutatis mutandis* when appealing against BaFin instructions. ²Instructions may be rescinded for breaching the thresholds set out in section 48l (2) sentence 2 numbers 1 to 3 only if the breach is obvious. ³Where the breach is not obvious, the institution may demand compensation from the absorbing legal entity pursuant to section 48m (4) and (5).

(4) Subsection (1) shall apply *mutatis mutandis* to action against a liquidation plan being declared binding (section 48m (8)) or against measures to implement a liquidation plan that has been declared binding (section 48m (9)).

Section 48s

Remedying the consequences of execution; compensation

(1) ¹The effectiveness of a spin-off published in the Federal Law Gazette pursuant to section 48c (6) sentence 3 shall not be affected by the fact of the Higher Administrative Court revoking the transfer order. ²It cannot, therefore, be demanded that the consequences of execution be remedied. ³Sentence 2 shall not apply if remedying the consequences

- 1 does not threaten to result in systemic risk,
- 2 would not threaten the legitimate interests of third parties, and
- 3 is not impossible.

(2) ¹Where remedying the consequences of execution pursuant to subsection (1) sentence 2 is impossible, the credit institution shall be entitled to compensation for the disadvantages incurred as a result of the transfer order. ²The institution shall be entitled to this even if the transfer order is not revoked because BaFin's actions are lawful pursuant to section 48a (2) sentence 2 and the credit institution is not answerable for the circumstances described in this provision.

(3) ¹Subsection 1 shall apply *mutatis mutandis* to the revocation of a back-transfer order provided that an announcement pursuant to section 48j (2) be made in place of a spin-off published in the Federal Gazette pursuant to section 48c (6) sentence 3. ²Subsection 2 shall apply *mutatis mutandis* to the revocation of a back-transfer order provided that the absorbing legal entity and the credit institution take the place of the credit institution.

Section 48t

Measures to mitigate macroprudential or systemic risk

(1) Should the Financial Stability Committee identify changes in the intensity of macroprudential or systemic risk within the meaning of Article 458 (2) of Regulation (EU) No 575/2013 with the potential to have serious negative consequences to the domestic financial system and the real economy which would better be addressed by means of national measures, BaFin, at the request of the Financial Stability Committee, can deviate for up to two years from the following provisions of Regulation (EU) No 575/2013 as last amended with respect to all institutions, or a group thereof, which are supervised by BaFin pursuant to this Act or Regulation (EU) No 575/2013 in order to reduce the identified changes in the intensity of macroprudential or systemic risk by raising

- 1 the own funds requirements pursuant to Article 92 of Regulation (EU) No 575/2013 as last amended,

- 2 the requirements for large exposures pursuant to Articles 392 and 395 to 403 of Regulation (EU) No 575/2013 as last amended,
- 3 the disclosure requirements pursuant to Articles 431 to 455 of Regulation (EU) No 575/2013 as last amended,
- 4 the capital conservation buffer pursuant to section 10c,
- 5 the liquidity requirements pursuant to Part 6 of Regulation (EU) No 575/2013 as last amended, or
- 6 the risk weightings in the Credit Risk Standardised Approach and Internal Ratings-Based Approach for residential and commercial real estate loans and for claims of institutions and undertakings against one another within the financial sector.

(2) BaFin may impose the blanket order pursuant to subsection (1) only if

- 1 it has reported to the European Parliament, the European Commission, the Council, the European Systemic Risk Board (ESRB) and the EBA
 - (a) the evidence of the threat to financial stability at national level pursuant to Article 458 (2) lit a to f of Regulation (EU) No 575/2013, including the national measures provided for in subsection (1) implementing Article 458 (2) letter (d) of Regulation (EU) No 575/2013 and
 - (b) explained why other available measures pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU are not sufficient to counteract the threat to financial stability at the national level, and
- 2 the conditions for imposing the measure pursuant to Article 458 (4) of Regulation (EU) No 575/2013 are met.

(3) ¹In consultation with the ESRB and the EBA, BaFin shall review the national measures taken pursuant to subsection (1) upon expiry of the authorisation period pursuant to Article 458 (9) of Regulation (EU) No 575/2013. ²If the conditions for extending the application of the national measures imposed pursuant to (1) are met, BaFin, at the request of the Financial Stability Committee and pursuant to the procedure provided for in Article 458 (4) of Regulation (EU) No 575/2013 as last amended, can extend the national measures repeatedly for one year by imposing a blanket order.

(4) Pursuant to Article 458 (5) to (7) of Regulation (EU) No 575/2013, BaFin, in consultation with the Deutsche Bundesbank and after presenting the matter to the Financial Stability Committee, may recognise, in whole or in part, the measures imposed by other EEA states pursuant to Article 458 of Regulation (EU) No 575/2013 and apply them to branches of institutions and entities domiciled outside of Germany to which this Act is applicable pursuant to section 52 or to branches within the meaning of section 53b pursuant to Article 458 of Regulation (EU) No 575/2013.

(5) If the conditions under subsection (2) number 1 are met, BaFin, irrespective of the procedure under subsections (1) and (3) and pursuant to Article 458 (4) of Regulation (EU)

No 575/2013 may, for up to two years or until the macroprudential or systemic risk no longer exists,

- 1 reduce the large exposure limit pursuant to Article 395 of Regulation (EU) No 575/2013 by up to 15 percent,
- 2 increase the risk weights for residential real estate and commercial real estate loans in the CRSA and IRBA by up to 25 percent and
- 3 increase the risk weights in the CRSA for institutions' and entities' exposures to one another within the financial sector by up to 25 percent and the risk weights in the IRBA by 25 percent.

Division 5 ENFORCEABILITY, SANCTIONS, COSTS AND CHARGES

Section 49

Immediate enforceability

Objections to and appeals against measures taken by BaFin, including the threat and imposition of enforcement measures on the basis of section 2c (1b) sentences 1 and 2, (2) sentence 1 and (4), section 3 (4), section 6a, section 8a (3) to (5), section 10 (3) and (4), section 12a (2), section 13c (3) sentence 4, section 25c (4c), section 28 (1), section 35 (2) numbers 2 to 6, sections 36, 37, and 44 (1), also in conjunction with section 44b (2) and (3a) sentence 1, of section 44a (2) sentence 1, sections 44c, 45, 45a (1) and section 45b (1), sections 45c, 46, 46b, 48a to 48q, 53l and 53n (1) have no postponing effect.

Section 50

(Repealed)

Section 51

Costs and charges

(1) ¹Institutions shall refund to the Federal Government 90% of the costs incurred by the Federal Banking Supervisory Office that are not covered by charges or separate refunds pursuant to subsection (3). ²The costs shall be apportioned among the individual institutions in accordance with the scale of their business and collected by the Federal Banking Supervisory Office as provided in the Administration Enforcement Act (*Verwaltungsvollstreckungsgesetz*). ³The provisions contained in the Cost Allocation Regulation for the Banking and Financial Services Sector (*Umlage-Verordnung Kredit- und Finanzdienstleistungswesen*) of 8 March 1999 (Federal Gazette I, 314) shall apply with legal force for the period from 12 March 1999 to 30 December 2000 in the wording valid on 12 March 1999. ⁴For the period from 31 December 2000 to 31 December 2001 the provisions contained in the Cost Allocation Regulation for the Banking and Financial Services Sector in the wording valid on 31 December 2000 shall apply with legal force. ⁵For the period from 1 January 2002 to 30 April 2002 the provisions contained in the Cost Allocation Regulation for

the Banking and Financial Services Sector in the wording valid on 1 January 2002 shall apply with legal force. ⁶The costs shall include refundable amounts that could not be collected and shortfalls from the previous year's cost apportionment for which costs are to be refunded; refunds or shortfalls on which no final and absolute or incontestable ruling has yet been made shall be excepted from this provision. ⁷The details concerning the apportionment of costs, especially regarding the apportionment key and date, the minimum assessment, the apportionment procedure including an appropriate estimation method, the payment deadlines and the amount of late payment penalties, and concerning the collection shall be determined by the Federal Ministry of Finance by way of a regulation; such regulation may also contain provisions governing the provisional setting of the apportionment amount. ⁸The Federal Ministry of Finance may transfer such authority by way of a regulation to the Federal Banking Supervisory Office.

(2) ¹For decisions pursuant to section 2 (4) or (5), section 10 (3b) sentence 1, section 31 (2), sections 32 and 34 (2) and sections 35 to 37, BaFin may levy charges of between €250 and €50,000. ²The sum charged should depend in each case on the amount of work required for the decision and the scale of business of the undertaking concerned.

(3) ¹The costs incurred by the Federal Government as a result of appointing a liquidator pursuant to section 37 sentence 2 and section 38 (2) sentences 2 and 4, a supervisor pursuant to section 46 (1) sentence 2, as a result of an announcement pursuant to section 32 (4), section 37 sentence 3 or section 38 (3) or of an audit carried out pursuant to section 44 (1) or (2), section 44b sentence 2 or section 44c (2) shall be refunded separately by the undertaking concerned, and at BaFin's request they shall be paid in advance. ²The costs incurred by the Federal Government as a result of a verification pursuant to section 44 (3) of the accuracy of the data transmitted for the aggregation pursuant to section 10a (6) and (7), section 13b (3) and section 25 (2) shall be refunded separately by the superordinated institution required to effect the aggregation, and at BaFin's request they shall be paid in advance.

(4) ¹Subsection (1) sentences 3 to 5 in the wording of the Act Amending the Insurance Supervision Act (*Gesetz zur Änderung des Versicherungsaufsichtsgesetzes*) of 15 December 2004 (Federal Gazette) I/3416) shall apply for the period from 12 March 1999 to 30 April 2002 to the costs incurred by BaFin. ²For the rest, subsections (1) to (3) shall apply for the period 30 April 2002 in the wording valid on 30 April 2002 to the costs incurred by BaFin.

Part IV

Special provisions for housing undertakings with a saving facility

Section 51a

Capital requirements for housing undertakings with a saving facility

(1) ¹In order to meet their obligations to their creditors, and particularly in the interests of the safety of the assets entrusted to them, housing undertakings with a saving facility must have adequate capital. ²The Federal Ministry of Finance, in consultation with the Deutsche Bundesbank, shall be authorised by way of a statutory order that does not require the consent of the Bundesrat, to issue more detailed provisions on the capital adequacy (solvency) of housing undertakings with a saving facility, in particular with regard to

- 1 identifying the transactions subject to a capital charge for counterparty credit risk and market risk and their risk parameters,
- 2 the subject and procedures relating to determining capital requirements for operational risk,
- 3 the methods for calculating capital requirements and the requisite technical principles,
- 4 contents, type, scope and form of the information required to demonstrate adequate own funds and provisions relating to the data storage media, transmission channels and data formats permissible for data transmission, and
- 5 the requirements an external credit assessment institution has to fulfil for its ratings to be recognised for risk weighting purposes and the requirements in terms of the rating.

³The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ⁴The central association representing housing undertakings with a saving facility is to be consulted before the statutory order is issued.

(2) In determining the adequacy of capital, BaFin can order that a housing undertaking with a saving facility must comply with capital requirements that exceed the requirements of the statutory order pursuant to subsection (1) sentence 2, in particular,

- 1 in order to take into account of such risks that are not or not fully the subject of the statutory order pursuant to section 10 (1) sentence 2,
- 2 if the resilience of a housing undertaking with a saving facility is not ensured,
- 3 in order to take due account of a particular business situation of the housing undertaking with a saving facility, such as when taking up business operations.
- 4 where the housing undertaking with a saving facility does not have in place a proper business organisation within the meaning of section 25a (1).

(3) When assessing capital adequacy, BaFin may permit, upon application from the institution, a different method of calculating capital adequacy in order to avoid risks being reflected inappropriately in particular cases.

(4) The calculation of the adequacy of capital in accordance with the statutory order pursuant to subsection (1) sentence 2 shall be based on liable capital.

(5) Capital that has been, or is being, provided by third parties or by subsidiaries of the housing undertakings with a saving facility can be recognised only if it has actually accrued to the housing undertaking with a saving facility.

(6) ¹The following shall be regarded as liable capital after deducting the positions listed in sentence 2:

- 1 the amounts paid up on members' shares and the reserves; amounts paid up on the shares of members who are retiring at the end of the financial year and their rights to the disbursement of a share in the cooperative society's revenue reserves, as shown separately in the balance sheet by registered cooperative societies pursuant to section 73 (3) of the Cooperative Societies Act, shall be deducted;
- 2 the net profit for the financial year, insofar as its appropriation to the reserves or to the amounts paid up on members' shares has been agreed.

²The positions to be deducted pursuant to sentence 1 are

- 1 the net loss for the financial year,
- 2 the intangible assets,
- 3 the adjustment item pursuant to subsection (9),
- 4 securitisation positions provided the statutory order pursuant to (1) sentence 2 provides for a choice between backing the securitisation position by own funds up to the full amount or deduction and the housing undertaking with a saving facility chooses the deduction.

(7) ¹Reserves within the meaning of subsection (6) sentence 1 comprise only the amounts designated as such in the balance sheet in the last approved annual accounts for the end of a financial year, with the exception of liability-side items that will be liable to tax only after they have been released. ²Amounts designated as reserves that have been formed from income which will become liable to tax only after a future event occurs may be counted only up to the level of 45%. ³Reserves which are formed as a result of premium income obtained through a share issue or through some other inflow of external funds may be included from the time of their inflow.

(8) ¹Where a housing undertaking with a saving facility draws up interim accounts, these shall be audited by an external auditor; in these cases, the interim accounts shall be deemed comparable to the annual accounts for the purposes of this provision, with interim profits assignable to capital insofar as they are not earmarked for anticipated dividends or tax

payments. ²Losses arising from interim accounts are to be deducted from capital. ³The housing undertaking with a saving facility shall submit the interim accounts to both BaFin and the Deutsche Bundesbank without delay. ⁴The auditor of the annual accounts shall send confirmation of having audited the interim accounts to BaFin and the Deutsche Bundesbank without delay. ⁵A truncated set of annual accounts covering a period of less than twelve months and drawn up in the wake of a merger shall not constitute a set of interim accounts within the meaning of this subsection.

(9) ¹BaFin may decide to define an adjustment item for the liable capital. ²If the adjustment item is defined in order to take into account capital changes which have not yet been recognised in the balance sheet, this definition shall become null and void upon the adoption of the next annual accounts drawn up for the end of a financial year. ³At the request of the housing undertaking with a saving facility, BaFin shall rescind its adjustment provided the reasons for it no longer apply.

Section 51b

Liquidity requirements for housing undertakings with a saving facility

(1) ¹Housing undertakings with a saving facility must invest their funds in such a way as to ensure that adequate liquidity is guaranteed at all times. ²Rent payments falling due in the coming twelve months are recognised as inflows of liquidity.

(2) ¹The Federal Ministry of Finance, in consultation with the Deutsche Bundesbank, shall be authorised by way of a statutory order that does not require the consent of the Bundesrat, to issue more detailed provisions on the adequacy of the liquidity, in particular with regard to

- 1 the methods for assessing liquidity adequacy and the requisite technical principles,
- 2 the transactions to be recognised as liquid assets and payment obligations, including their assessment bases, as well as
- 3 the duty of housing undertakings with a saving facility to provide BaFin and the Deutsche Bundesbank with the information required to demonstrate liquidity adequacy, including provisions on the contents, nature, scope and form of the information, on the frequency of provision thereof and on the permissible data storage media, transmission channels and data formats.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. ³The central association representing housing undertakings with a saving facility is to be consulted before the statutory order is issued.

(3) BaFin, in assessing an individual institution's liquidity, may order the housing undertaking with a saving facility to meet liquidity requirements which go beyond the statutory order pursuant to subsection (2) sentence 1 if long-term liquidity is not assured in the absence of such a measure.

Section 51c

Other special provisions relating to housing undertakings with a saving facility

(1) Deposit business within the meaning of section 1 (29) sentence 1 number 3 may be conducted only with the members of the cooperative association and their employees pursuant to section 15 of the Fiscal Code and the members' life partners within the meaning of section 1 (1) of the Act on Registered Civil Partnerships (*Lebenspartnerschaftsgesetz*).

(2) Section 25c (1) shall apply with the proviso that managers of housing undertakings with a saving facility can acquire practical knowledge in the relevant business retrospectively in individual cases if at least two members of the board of managers possess the professional qualifications pursuant to section 25c (1) and it is assured that these members always have a voting majority in all decisions.

(3) § 25c (4a) number 3 letters (d), (e) and (g) shall apply with the proviso that reporting shall take place at appropriate intervals, but at least annually.

(4) Sections 6b, 7a, 10 to 18, 24 (1) numbers 16 and 17 and (1a) number 5, sections 24c, 25, 25d (7) to 12, section 25f and section 26a shall not apply.

(5) Section 33 (1) sentence 1 shall apply subject to the proviso that a housing undertaking with a saving facility has as its initial capital the equivalent of at least €5 million.

Part V

Special provisions

Section 52

Special supervision

Insofar as institutions are subject to any other government supervision, this shall remain in effect alongside supervision by BaFin.

Section 52a

Limitation of claims against members of governing bodies of credit institutions

(1) Claims by credit institutions against senior managers and the members of the supervisory or administrative bodies arising from the relationship as executive or employee for breach of due diligence duties shall become statute-barred after ten years.

(2) Subsection 1 shall also apply to claims that arose before 15 December 2010 and are not yet statute-barred.

Section 53

Branches of undertakings domiciled outside Germany

(1) ¹If an undertaking domiciled abroad maintains a branch in Germany which conducts banking business or provides financial services, that branch shall be deemed to be a credit institution or a financial services institution. ²If the undertaking maintains several branches in Germany, they shall be deemed to be a single institution.

(2) This Act shall apply to the institutions specified in subsection (1) subject to the following provisos:

- 1 the undertaking must appoint at least two natural persons residing in Germany who are authorised to manage the undertaking's business and to represent it in respect of the institution's field of business insofar as the institution conducts banking business or provides financial services and, in providing financial services, is authorised to obtain ownership or possession of funds or securities of customers. These persons shall be deemed to be senior managers. Their names shall be filed for registration in the Commercial Register.
- 2 the institution is obliged to keep separate books and render separate accounts to BaFin and the Deutsche Bundesbank in respect of the business it conducts and the assets of the undertaking used in its business. To this extent, the provisions of the Commercial Code on trading books shall apply *mutatis mutandis*. On the liabilities side of the annual statement of assets and liabilities, the amount of working capital placed at the institution's disposal by the undertaking and the amount of operating surplus retained by the institution to bolster its own funds shall be shown separately.

The amount by which the liability items exceed the asset items or by which the asset items exceed the liability items shall be shown separately and in a single sum at the end of the statement of assets and liabilities.

- 3 the statement of assets and liabilities to be drawn up for the end of each financial year pursuant to number 2, together with a statement of income and expenses and notes thereon, shall be deemed to constitute the annual accounts (section 26). Section 340k of the Commercial Code shall apply *mutatis mutandis* to the auditing of the annual accounts subject to the proviso that the auditor is chosen and appointed by the senior managers. The annual accounts of the undertaking for the same financial year shall be submitted along with the annual accounts of the institution.
- 4 section 33 (1) sentence 1 number 1 letter (d) shall apply *mutatis mutandis* to branches that conduct both deposit and lending business. The sum total of the amounts shown in the monthly return pursuant to section 25 as working capital placed at the institution's disposal by the undertaking and operating surplus retained by the institution to bolster its own funds, less the amount of a credit balance on inter-branch settlement account, if any, shall be deemed to constitute the institution's own funds. In addition, capital pursuant to Article 71 of Regulation (EU) No 575/2013 in the version in force shall be attributed to the institution; Articles 25 to 91 of Regulation (EU) No 575/2013 in the version in force shall apply subject to the proviso that the own funds pursuant to sentence 2 are deemed to be common equity tier 1 capital.
- 5 authorisation may also be refused if reciprocity on the basis of international agreements is not assured. Authorisation will be revoked if and insofar as the undertaking's authorisation to conduct banking business or provide financial services has been revoked by the authority responsible for supervising the undertaking outside Germany.
- 6 for the purposes of section 36 (1), the institution shall be deemed to be a legal person.
- 7 the institution shall notify BaFin and the Deutsche Bundesbank without delay of the establishment of new branches and the closure of branches in Germany.

(2a) For the provisions of this Act relating to an institution which is a subsidiary of an undertaking domiciled outside Germany, the branch shall be deemed to be a wholly owned subsidiary of the institution's central office domiciled outside Germany.

(3) For litigation relating to the business operations of a branch within the meaning of subsection (1), the place of jurisdiction of the affiliate, pursuant to section 21 of the Code of Civil Procedure, may not be contractually excluded.

(4) Subsections (2) and (3) shall not apply if they conflict with international agreements which have been approved by the legislative bodies in the form of a Federal law.

(5) ¹If a decision has been taken to wind up a branch, it will be filed for registration in the Commercial Register of the Court relevant for the branch and all legal actions with third parties will bear the note "in liquidation". ²The authorisation will be returned to BaFin.

(6) ¹The liquidation of the branch, which must likewise be entered in the Commercial Register, may be carried out only with BaFin's consent. ²As a rule, such consent will be refused if the undertaking fails to provide proof that the complete business of the branch has been wound up.

Section 53a

Representative offices of institutions domiciled outside Germany

¹An institution domiciled abroad may establish or continue a representative office in Germany if it is authorised to conduct banking business or provide financial services in its home state and if it has its head office there. ²The institution shall notify BaFin and the Deutsche Bundesbank without delay of its intention to establish a representative office, as well as of the realisation of that intention. ³BaFin will confirm to the institution the receipt of such notification. ⁴The representative office, including its managers, may commence its activities only after the institution has received the confirmation from BaFin. ⁵The institution shall report the relocation or closure of the representative office to BaFin and the Deutsche Bundesbank without delay.

Section 53b

Undertakings domiciled in another EEA state

(1) ¹A CRR credit institution or a securities trading firm domiciled in another EEA state may conduct banking business or provide financial services in Germany, either through a branch or by providing cross-border services, without authorisation from BaFin if the undertaking has been granted approval by the competent authorities of the home state, the business it conducts is covered by the approval granted and the undertaking is supervised by the competent authorities in accordance with the directives issued by the European Union. ²Sentence 1 shall apply *mutatis mutandis* to CRR credit institutions which also provide payment services within the meaning of the Payment Services Oversight Act. ³Section 53 shall not apply in this case. ⁴This is without prejudice to section 14 of the Industrial Code.

(2) ¹BaFin will notify an undertaking within the meaning of subsection (1) sentences 1 and 2 intending to establish a branch in Germany, within two months of receipt of the documents relating to the intended establishment of the branch transmitted by the competent authorities of the home state, of the reports to BaFin and the Deutsche Bundesbank prescribed for its operations, and will specify the terms and conditions applying pursuant to subsection (3) sentence 1, on grounds of general interest, to the performance of the operations planned by the branch. ²After receipt of the notification from BaFin, but not later than after the expiry of the period specified in sentence 1, the branch can be established and commence operations. ³If an undertaking within the meaning of subsection (1) sentence 1 intends to use tied agents, BaFin can ask the competent authorities of the home state for their names. ⁴BaFin may post

corresponding information on its website. ⁵ESMA may, in accordance with the procedure and under the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, request access to this information.

(2a) BaFin will notify an undertaking within the meaning of subsection (1) sentences 1 and 2 intending to engage in operations in Germany by providing cross-border services – within two months of receiving the documentation relating to the intended commencement of the cross-border services transmitted by the competent authorities of the home state – of the terms and conditions applicable pursuant to subsection (3) sentence 3 to the performance of the planned operations on grounds of public interest.

(3) ¹The following provisions shall apply *mutatis mutandis* to branches within the meaning of subsection (1) sentences 1 and 2 subject to the proviso that one or more branches of the same undertaking are deemed to be one credit institution or a financial services institution:

- 1 section 3 (1) and section 6 (2),
- 1a section 10 (2),
- 2 section 11, in the case of a CRR credit institution,
- 3 sections 14, 22 and 23,
- 4 section 23a, in the case of a CRR credit institution or a financial services institution,
- 5 section 24 (1) numbers 5 and 7,
- 6 sections 24b, 24c, 25 and 25a (1) sentence 6 number 2,
- 7 section 25h (1) to (3) insofar as requirements for combating money laundering and the financing of terrorism are concerned, as well as section 25h (4) and (5),
- 8 sections 25i to 25k, 25m, 37, 39 to 42, 43 (2) and (3), 44 (1) and (6), 44a (1) and (2) as well as sections 44c and 46 to 49, and
- 9 section 17 of the Act Establishing the Federal Financial Supervisory Authority.

²Changes in the business plan, especially in the type of planned business and the organisational structure of the branch, the address and the managers, as well as in the deposit insurance scheme in the institution's home country to which the institution belongs, shall be notified to BaFin and the Deutsche Bundesbank in writing not less than one month before the entry into force of such changes. ³Section 3 (in the case of a CRR credit institution or a financial services institution), sections 23a, 37, 44 (1) and sections 44c and 49 as well as section 17 of the Act Establishing the Federal Financial Supervisory Authority shall apply *mutatis mutandis* to operations constituting cross-border services pursuant to subsection (1) sentences 1 and 2. ⁴Section 23a shall not apply to operators of multilateral trading systems who provide access to such systems in Germany by way of cross-border services.

(4) ¹If BaFin ascertains that an undertaking within the meaning of subsection (1) sentences 1 and 2 is not fulfilling its obligations pursuant to subsection (3) or of Regulation (EU) No 575/2013 or that it is very likely that it will not fulfil its obligations, it will inform the competent

authorities of the home state without delay. ²If the home state fails to take any measures, or if its measures prove to be insufficient, BaFin, after having informed the competent authorities of the home state, may take the necessary measures; if necessary, BaFin may prohibit the undertaking from conducting new business in Germany

(5) ¹In urgent cases, BaFin may take the necessary measures before initiating the procedure envisaged in subsection (4) pending measures by the home state within the meaning of Article 2 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125/15 of 5 May 2001). ²It will notify the European Commission, the EBA and the competent authorities of the home state thereof without delay. ³These measures will be set aside if

- 1 the home state has ordered reorganisation measures within the meaning of Article 2 of Directive 2001/24/EC,
- 2 the home state has ordered or taken the necessary measures to ensure that the undertaking fulfils its obligations,
- 3 the European Commission decided, after consulting BaFin, the home state and the EBA, that the measures pursuant to sentence 1 are to be set aside or
- 4 the reason for ordering them no longer applies.

(6) The competent authorities of the home state, after having first notified BaFin, may verify the information needed for the prudential supervision of the branch at the branch concerned, either themselves or through their representative agents.

(7) ¹An undertaking domiciled in another EEA state which conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1 to 3, 5 and 7 to 9, provides financial services within the meaning of section 1 (1a) sentence 2 numbers 7, 9 and 10 or provides payment services within the meaning of the Payment Services Oversight Act or operates as a financial undertaking within the meaning of section 1 (3) may conduct these operations, notwithstanding section 32, without authorisation from BaFin through a branch or by providing cross-border services in Germany if

- 1 the undertaking is a subsidiary of a CRR credit institution or a joint subsidiary of several CRR credit institutions,
- 2 its articles of association or articles of incorporation permit such operations,
- 3 the parent undertaking(s) is (are) authorised to operate as a CRR credit institution in the state in which the undertaking is domiciled,
- 4 the operations performed by the undertaking are likewise conducted in the home state,
- 5 the parent undertaking(s) hold(s) at least 90 per cent of the voting rights in the subsidiary,

- 6 the parent undertaking(s) has (have) submitted convincing evidence of the prudent management of the undertaking to the competent authorities of the undertaking's home state and, with the consent of these competent authorities of the home state, has (have) jointly and severally guaranteed the obligations incurred by the subsidiary, and
- 7 the undertaking is included in the supervision of the parent undertaking on a consolidated basis.

²Sentence 1 shall apply as appropriate to subsidiaries of undertakings, financial holding companies, mixed financial holding companies and mixed-activity holding companies specified in sentence 1 which satisfy the aforementioned conditions. ³Subsections (2) to (6) shall apply *mutatis mutandis*.

(8) ¹BaFin may request that a domestic branch of an institution domiciled in another EEA state be regarded as significant. ²If the institution belongs to a group of institutions, financial holding group or mixed financial holding group headed by an EU parent institution or an EU parent financial holding company or a mixed EU parent financial holding company, BaFin will submit the request to the authority responsible for the supervision of the group on a consolidated basis; otherwise, it will submit such request to the competent authority of the home state. ³The request must be substantiated. ⁴A branch shall be regarded as significant, in particular, if

- 1 its market share in terms of deposits exceeds 2%,
- 2 if a suspension or closure of the operations of the institution would likely have an impact on systemic liquidity and the payment, clearing and settlement systems in the host member state or
- 3 if the branch has a certain size and the importance in terms of number of clients within the context of the banking or financial system.

⁵BaFin may require the institutions pursuant to sentence 1 to submit all the information necessary for making the assessment pursuant to sentence 4.

(9) ¹If BaFin, the competent authority of the home state as well as, if appropriate, the authority responsible for the supervision of the group on a consolidated basis do not reach a unanimous decision about classifying the branch as significant within two months of receipt of the application, BaFin will itself decide – taking into consideration the opinions and reservations of the other competent authority – within a further two months about the classification of a branch as significant. ²The other competent authorities shall be notified of this decision in writing, stating the reasons therefor. ³If, by the expiry of the period specified in sentence 1, BaFin or a competent authority domiciled in another state of the EEA requests assistance from the EBA pursuant to Article 19 of Regulation (EU) No 1093/2010, BaFin will defer its decision pursuant to sentence 1 and await a decision by the EBA in accordance with Article 19 (3) of Regulation (EU) No 1093/2010, and will then reach a decision that is

consistent with it. ⁴The EEA can no longer be requested to provide assistance after the end of the two-month period, or after a joint decision has been reached.

(10) ¹If BaFin is responsible for supervision of subsidiaries of an EU parent credit institution or a EU parent financial holding company or an EU parent mixed financial holding company on an individual or sub-consolidated basis, for the consolidated supervision of which it is not responsible, and if no joint decision is reached by all the competent authorities about the amount of the own funds and the necessity for additional own funds requirements within the four-month period, BaFin will decide on its own whether the amount of own funds of the subsidiaries subject to its supervision is appropriate and whether additional own funds requirements will be necessary. ²In reaching its decision BaFin will duly take into account the opinions and reservations of the competent authority which carries out the supervision on a consolidated basis of the group of institutions, the financial holding group or the mixed financial holding group; the decision must take into account the risk assessment as well as the opinions and reservations which the other competent authorities have expressed during the four-month period. ³If, by the expiry of the period specified in section 8a (4) sentence 1, BaFin or a competent authority domiciled in another EEA state requests assistance from the EBA pursuant to Article 19 of Regulation (EU) No 1093/2010, BaFin will defer its decision pursuant to sentence 1 and await a decision by the EBA in accordance with Article 19 (3) of Regulation (EU) No 1093/2010, and will then reach a decision that is consistent with it. ⁴The EEA shall not be requested to provide assistance after the end of the four-month period, or after a joint decision has been reached. ⁵BaFin will send its decision in writing, stating the reasons therefor, to the competent authority which carries out the supervision on a consolidated basis of the group of institutions, the financial holding group or the mixed financial holding group. ⁶Where the EBA was consulted, BaFin will take its comment into account and explain any significant deviation therefrom.

(11) ¹Before BaFin orders an inspection pursuant to section 44 of a branch operating in Germany, it must consult the competent authorities of the home state. ²The information and findings that are gained from the examination shall be communicated to the competent authorities of the home state if they are relevant for the risk assessment of the parent institution or for the stability of the financial system in the home state.

Section 53c

Undertakings domiciled in a non-EEA state

The Federal Ministry of Finance shall be authorised, by way of a statutory order,

- 1 to stipulate that the provisions of this Act concerning foreign undertakings domiciled in another EEA state will likewise be applied to undertakings domiciled in a non-EEA state insofar as this is necessary in the context of the right of establishment or of service transactions or for supervision on a consolidated basis by virtue of agreements of the European Communities with non-EEA states;

- 2 to order that the provisions of section 53b be applied in full or in part, with full or partial exemption from the provisions of section 53, to undertakings domiciled in a non-EEA state if reciprocity is assured and if
- (a) the undertakings are supervised in their country of domicile in the areas covered by the exemption in accordance with internationally recognised principles,
 - (b) branches of corresponding undertakings domiciled in Germany are afforded comparable exemptions in that state, and
 - (c) the competent authorities of the country of domicile are willing to cooperate satisfactorily with BaFin and if this is guaranteed by means of an international agreement.

Section 53d

Parent undertakings domiciled in a non-EEA state

(1) If deposit-taking credit institutions, e-money institutions or securities trading firms domiciled in Germany, which are subsidiaries of either an institution or a financial holding company domiciled in a non-EEA state, are not subject to a level of supervision in that non-EEA state which is equivalent to the provisions of this Act relating to supervision on a consolidated basis, BaFin can define the group of undertakings as a group of institutions or a financial holding group and an institution as a superordinated undertaking; the provisions of this Act relating to supervision on a consolidated basis shall apply *mutatis mutandis* in this case. ²Before reaching a decision on the equivalence of the supervision pursuant to sentence 1, BaFin will consult the EBA.

(2) (Repealed)

(3) ¹Notwithstanding subsection (1) and section 15 (2) of the of the Supervision of Financial Conglomerates Act, BaFin can in individual cases ensure appropriate supervision on a consolidated basis in other ways. ²In particular, BaFin can request that a financial holding company or a mixed financial holding company domiciled in Germany or in another EEA state be established, to which the provisions of this Act relating to supervision on a consolidated basis shall apply *mutatis mutandis*.

4) ¹In the cases specified in subsection (3), BaFin will inform the competent authorities of the home state of the procedure chosen. ²This is without prejudice to the duties pursuant to section 7a (2) number 3 and section 7b (3) number 2.

Part VI

Special provisions relating to central counterparties

Section 53e

Holders of qualified participating interests

Section 2c (2) in conjunction with subsection (1b) sentence 1 numbers 1, 3 and 4 to 6 shall apply *mutatis mutandis* insofar as BaFin is, pursuant to Article 30 (4) of Regulation (EU) No 648/2012, to take the necessary measures to end the influence of the persons mentioned in Article 30 (1) of Regulation (EU) No 648/2012 which is likely to be detrimental to the sound and prudent management of a central counterparty; section 44b shall apply *mutatis mutandis*.

Section 53f

Colleges of supervisors

(1) If BaFin and the Deutsche Bundesbank belong to a college of supervisors pursuant to Article 18 of Regulation (EU) No 648/2012, each shall have one vote for the purpose of voting.

(2) If, pursuant to Article 19 (3) sentence 3 of Regulation (EU) No 648/2012, three votes are prescribed for German supervisory authorities or BaFin and the Deutsche Bundesbank do not belong to the college of supervisors, they shall be replaced by the competent supervisory authorities of the trading venues within the meaning of Article 18 (2) of Regulation (EU) No 648/2012 in the order of the volume of financial instruments traded at the trading venue in the previous calendar year that was settled through the central counterparty in question.

Section 53g

Financial resources of central counterparties

In determining the adequacy of the financial resources, BaFin can order that a central counterparty comply with requirements concerning own funds and the other financial resources that exceed the requirements of Articles 16 and 43 of Regulation (EU) No 648/2012, in particular

- 1 in order to safeguard an additional financial buffer for periods of economic downturn,
- 2 in order to take account of risks that arise from company law arrangements or dependencies of a central counterparty, in particular as part of group of institutions or a financial holding group or
- 3 in order to take account of s particular business situation of a central counterparty.

Section 53h
Liquidity

BaFin, in assessing an individual central counterparty's liquidity, may order a central counterparty to meet liquidity requirements which go beyond the requirements pursuant to Article 44 of Regulation (EU) No 648/2012, where appropriate in conjunction with regulatory technical standards adopted in accordance with Article 44 (2), if a central counterparty's long-term liquidity is not assured in the absence of such a measure.

Section 53i

Granting access pursuant to Articles 7 and 8 of Regulation (EU) No 648/2012

¹A central counterparty which has been issued with an authorisation pursuant to Article 14 of Regulation (EU) No 648/2012 must inform BaFin without delay in writing of the receipt of requests for access pursuant to Article 7 of Regulation (EU) No 648/2012 as well as of the submission of a request for access pursuant to Article 8 of Regulation (EU) No 648/2012.

²BaFin may prohibit the central counterparty

- 1 in accordance with the requirements of Article 7 (4) of Regulation (EU) No 648/2012 prohibit the central counterparty from granting access within the meaning of Article 7 of the said Regulation or
- 2 in accordance with the requirements of Article 8 (4) of Regulation (EU) No 648/2012 prohibit the central counterparty from accessing a trading venue within the meaning of Article 8 of the said Regulation.

Section 53j

Notifications; authority to issue orders

(1) A central counterparty shall by the end of each month notify BaFin and the Deutsche Bundesbank of

- 1 compliance with the initial margins pursuant to Article 41 (1) sentences 2 and 3 of Regulation (EU) No 648/2012
- 2 the total amount of the default fund(s) pursuant to Article 42 (1) of Regulation (EU) No 648/2012,
- 3 the total amount of the other financial resources pursuant to Article 43 of Regulation (EU) No 648/2012 including a statement as to whether the default fund and the other financial resources are able to cover the default of the two clearing members defined pursuant to Article 43 (2) of Regulation (EU) No 648/2012.
- 4 the total amount as at a given date of the credit lines or similar arrangements to cover the liquidity needs and the respective counterparties as well as of the potential daily liquidity needs pursuant to Article 44 (1) of Regulation (EU) No 648/2012.

- 5 the total amount of all collateral accepted during the reporting period pursuant to Article 46 (1) of Regulation (EU) No 648/2012, broken down by collateral in the form of cash, securities and guarantees; cash collateral is to be broken down further by currency and the securities by the type, the respective haircut and the respective share of the total collateral as well as, if given, the release date of the collateral and
- 6 the counterparties in the case of which financial resources within the meaning of Regulation (EU) No 648/2012 were invested as of the relevant date, stating in each case the invested volume and the collateral provided.

(2) ¹The documents which are to be submitted to BaFin under Regulation (EU) No 648/2012 shall be written and submitted in German and, at BaFin's request, additionally in English.

²BaFin may permit the documents to be written and submitted in English only.

(3) ¹The Federal Ministry of Finance shall be authorised to issue by way of a statutory order that does not require the consent of the Bundesrat, in consultation with the Deutsche Bundesbank and after consulting the central associations representing the institutions, more detailed provisions on

- 1 the nature, scope, time and form of the notifications required under subsection (1) and of any documents that may be needed as evidence.
- 2 the data storage media, transmission channels and data formats permissible for such notifications and
- 3 a supplement to the notification obligations existing under subsection (1) through the submission of summary reports and lists

insofar as this is necessary for the fulfilment of BaFin's tasks, in particular to enable it to obtain consistent records for assessing the clearing carried out by the central counterparties.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order provided that the statutory order is to be issued in agreement with the Deutsche Bundesbank.

Section 53k

Outsourcing of activities and processes

If a central counterparty outsources activities and processes pursuant to Article 35 of Regulation (EU) No 648/2012, Article 25b (3) sentences 1 and 2 and subsection (4) shall apply *mutatis mutandis*.

Section 53l

Power to issue orders; measures in the case of organisational deficiencies

(1) ¹In individual cases, BaFin may issue orders to a central counterparty which are appropriate and necessary to ensure compliance with the requirements of Regulation (EU) No 648/2012. ²In particular, to ensure a proper business organisation is in place, and to

ensure compliance with the organisational requirements and the requirements pursuant to Articles 26, 28, 29, 31 (1) sentence 2 as well as Articles 33 to 35 of Regulation (EU) No 648/2012, it may order that a central counterparty

- 1 must take measures to reduce risks insofar as they arise from certain types of transactions and products or through the use of certain systems or from the outsourcing of activities and processes to another undertaking, or
- 2 may not engage in certain types of business or services, or may engage in such types of business or services only to a limited extent.

(2) BaFin may, instead of the measures named in subsection (1) sentence 2 or together with these measures order that the central counterparty comply with own funds requirements which go beyond the requirements pursuant to Article 16 (2) of Regulation (EU) No 648/2012, where appropriate in conjunction with regulatory technical standards pursuant to subsection (3) of same.

Section 53m

Contents of the application for authorisation

(1) An application for authorisation to operate as central counterparty in Germany pursuant to Articles 14 and 17 of Regulation (EU) No 648/2012 must state the following:

- 1 the type of the products cleared
- 2 a description of the venue and the design of the models and parameters which are used to calculate the margin requirements within the meaning of Article 41 of Regulation (EU) No 648/2012, indicating the relevant pricing sources within the meaning of Article 40 of Regulation (EU) No 648/2012,
- 3 evidence of the establishment of a default fund within the meaning of Article 42 of Regulation (EU) No 648/2012 and a description of its design,
- 4 a description of the measures with regard to the maintaining of other financial resources within the meaning of Article 43 (1) of Regulation (EU) No 648/2012,
- 5 a description of the liquidity risk control mechanisms within the meaning of Article 44 of Regulation (EU) No 648/2012,
- 6 a description of the collateral requirements within the meaning of Article 46 of Regulation (EU) No 648/2012,
- 7 information on investment policy within the meaning of Article 47 of Regulation (EU) No 648/2012,
- 8 a description of the procedures in the event of a clearing member's default in accordance with Article 48 of Regulation (EU) No 648/2012,
- 9 a description of review procedures within the meaning of Article 49 of Regulation (EU) No 648/2012 and

10 all the information set out in section 32 (1) sentence 2; the statutory order issued in accordance with section 32 (1) sentence 3 shall apply *mutatis mutandis*.

(2) BaFin may request further documents if they are required to assess the application for approval.

Section 53n

Measures to improve the financial resources and the liquidity of a central counterparty authorised pursuant to Regulation (EU) No 648/2012

(1) ¹If the assets and liabilities, financial position or profitability of a central counterparty or other circumstances justify the assumption that the central counterparty will not be able to sustainably fulfil the requirements of Articles 41, 42, 43, 44, 46 or 47 of Regulation (EU) No 648/2012, in each case in conjunction with the regulatory technical standards adopted to concretise these requirements, BaFin may order the central counterparty to take measures to improve the adequacy of its own funds and liquidity, in particular

- 1 to transmit 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,
- 2 to review measures for improving protection against or reducing the major risks identified by the central counterparty and the associated risk concentrations and to report this to BaFin and the Deutsche Bundesbank, whereby concepts for exiting from individual business areas or severing parts of the central counterparty should also be reported,
- 3 to report on suitable measures to ensure compliance with the margin requirements, the size of the default fund, the other financial resources, the liquidity, the collateral requirements and the investment policy, or
- 4 to present to BaFin and the Deutsche Bundesbank a concept for averting a potentially dangerous situation within the meaning of section 35 (2) number 4.

²The assumption that the central counterparty will not be able to sustainably comply with the requirements is routinely justified if

- 1 the margin payments
 - (a) are not sufficient on at least one day in two reporting periods pursuant to section 53j (1) within one calendar year to cover the losses that result from at least 99 % of the exposures movements over the time horizon specified under Article 41 (1) of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in paragraph (5) thereof, or
 - (b) do not fully hedge, at least on a daily basis, all exposures with all its clearing members and the other central counterparties with which it has interoperability arrangements,

- 2 the default fund does not reach the minimum amount referred to in Article 41 (1) sentence 2 of Regulation (EU) No 648/2012 in two reporting periods pursuant to section 53j (1),
- 3 the default fund and the other financial resources are not sufficient on two reporting dates pursuant to section 53j (1) within one calendar year to cover a default of the two clearing members referred to in Article 43 (2) of Regulation (EU) No 648/2012,
- 4 the credit lines or similar arrangements which exist to cover the liquidity needs referred to in Article 44 (1) of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in paragraph (2) thereof, are not sufficient on two reporting dates pursuant to section 53j (1) to cover the liquidity risk with regard to the default of at least the two clearing members to which the central counterparty has the largest exposures.
- 5 the central counterparty has in two reporting periods pursuant to section 53j (1) accepted in each case more than 3% of the overall collateral without taking into account the requirements referred to in Article 46 (1) of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in paragraph (3) thereof or
- 6 the central counterparty has in two reporting periods pursuant to section 53j (1) invested in each case more than 3% of the overall collateral without taking into account the requirements referred to in Article 47 (1) of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in paragraph (8) thereof.

(2) In place of the measures pursuant to subsection (1) sentence 1 or in conjunction with these measures, BaFin may order the adoption of measures pursuant to subsection (3) sentence 1 numbers 1 to 7 if the measures pursuant to subsection (1) sentence 1 do not provide sufficient assurance of sustainably ensuring compliance with the requirements pursuant to Articles 41, 42, 43, 44, 46 or 47 of Regulation (EU) No 648/2012, in each case also in conjunction with the technical regulation standards adopted to concretise these requirements; subsection (4) shall thus apply *mutatis mutandis*.

(3) ¹If in the case of a central counterparty the financial resources do not comply with the requirements pursuant to Articles 41, 42 or 43 of Regulation (EU) No 648/2012, in each case also in conjunction with the technical regulation standards adopted to concretise these requirements, or the requirements pursuant to section 45b (1) sentence 2, the liquidity does not comply with the requirements pursuant to Article 44 of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in paragraph (2) thereof, the collateral received does not comply with the requirements pursuant to Article 46 of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in paragraph (3) thereof or the investment of the financial resources does not comply with the requirements pursuant to Article 47 of Regulation (EU) No 648/2012, also in conjunction with regulatory technical standards referred to in subsection (8) thereof, BaFin may

- 1 prohibit or limit both withdrawals by the proprietors or partners and the distribution of profits,
- 2 prohibit or limit balance sheet measures that serve to offset an existing annual loss or to show a balance sheet profit,
- 3 order that the distribution of all types of disbursements on own funds instruments apart from those pursuant to section 10 (5a) be dispensed with fully or in part and without replacement if they are not fully covered by an existing annual profit,
- 4 order the institution to take measures to reduce risks insofar as they arise from certain types of activities and products or through the use of certain systems,
- 5 prohibit or limit variable components of compensation to a certain proportion of the profit for the year; this does not apply to variable components of compensation established in a 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 sectoral labour agreement,
- 6 order the central counterparty 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; this does not apply to variable components of remuneration established in a 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, or
- 7 order that the central counterparty explain how and in what period of time its financial resources or its liquidity is to be sustainably restored (the central counterparty's restructuring plan) and that BaFin and the Deutsche Bundesbank are to be regularly informed of the progress of these measures.

²The restructuring plan pursuant to sentence 1 number 7 must be transparent, plausible and justified. ³The plan must name concrete aims, interim targets and deadlines for the implementation of the measures described, which can be monitored by BaFin. ⁴BaFin can, at any time, inspect the central counterparty's restructuring plan and the associated documents. ⁵BaFin can demand that the central counterparty's 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 the central counterparty does not adhere to them.

(4) ¹BaFin may issue the orders specified in subsection (3) only if the central counterparty has failed to remedy the deficiency within a period to be set by BaFin. ²If this is required to prevent a foreseeable short-term deterioration in the financial resources or the liquidity of the central counterparty or if measures pursuant to subsection (1) sentence 1 have already been taken, such orders are permissible even without prior warning with the setting of a deadline.

³Decisions on the distribution of profits shall be invalid insofar as they contradict an order issued pursuant to subsection (3). ⁴If provisions in contracts on own funds instruments contradict an order issued pursuant to subsection (3), no rights can be derived from them. ⁵At the same time as or subsequent to prohibiting the payment of variable components of remuneration pursuant to subsection (3) sentence 1 number 5, BaFin can order that entitlements to confer variable remuneration components are rendered completely or partly invalid if

- 1 the central counterparty at the same time as or subsequent to prohibiting the payment makes use of financial assistance from the Restructuring Fund or the Financial Market Stabilisation Fund and, in the event of a subsequent order, the preconditions for the prohibition of the payment have by this point in time not ceased to apply, or have ceased to apply only on the basis of said assistance,
2. an order by BaFin pursuant to subsection (3) sentence 1 numbers 1 to 4, 6 or 7 is issued or is already in place after payment has been prohibited or
- 3 measures pursuant to section 46 or pursuant to section 48a are taken at the time the payment is prohibited or thereafter.

⁶An order pursuant to sentence 5 may be also issued, in particular, if

- 1 the entitlements to grant variable remuneration were created on the basis of provisions of a central counterparty's remuneration system which contradict the prudential requirements of Regulation (EU) No 648/2012 for suitable and transparent remuneration systems geared towards the central counterparty's sustainable development, or
- 2 it is to be assumed that without the granting of financial assistance by the Restructuring Fund or the Financial Market Stabilisation Fund the central counterparty would not have been in a position to grant the variable remuneration components; if it is to be assumed that the central counterparty would have been able to grant some of the variable remuneration components, the variable remuneration components are to be cut commensurately.

⁷Sentences 5 and 6 shall not apply if the entitlements to grant variable remuneration came into existence before 16 February 2013. ⁸Central counterparties must take account of the power to issue orders pursuant to subsection (3) sentence 1 number 6 and the provision in sentence 1 in corresponding contractual agreements with their senior management and staff members. ⁹If contractual agreements on the granting of variable remuneration run counter to an order pursuant to subsection (3) sentence 1 number 5 or 6, no rights can be derived from them.

Part VII

Provisions on penalties and fines

Section 54

Prohibited business, operating without authorisation

(1) Anyone who

- 1 conducts business which is prohibited under section 3, also in conjunction with section 53b (3) sentence 1 or 2, or
- 2 conducts banking business or provides financial services without the authorisation required under section 32 (1) sentence 1,

shall be punished by a term of imprisonment of up to five years or by a fine.

(1a) Anyone who provides clearing services without authorisation pursuant to Article 14 (1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ EU L 201/1 of 27 July 2012) shall likewise be liable to punishment.

(2) If the perpetrator acts with negligence, the punishment shall be imprisonment of up to three years or a fine.

Section 54a

Provisions on penalties

(1) Anyone who, in violation of section 25c (4a) or section 25c (4b) sentence 2, does not ensure that an institution or a group specified there has in place a strategy, process, procedure, function or concept specified there, thus posing a going-concern risk to the institution, the superordinated undertaking or an undertaking belonging to the group, shall be punished by a term of imprisonment of up to five years or by a fine.

(2) Anyone who in the cases referred to in subsection (1) causes the risk through negligence shall be punished by a term of imprisonment of up to two years or by a fine.

(3) The act shall be punishable only if BaFin has instructed the perpetrator by means of an order pursuant to section 25c (4c) to remedy the infringement against section 25c (4a) or section 25c (4b) sentence 2 and the perpetrator violates this enforceable order, thus posing a going-concern risk to the institution.

Section 55

Violation of the duty to report insolvency or overindebtedness

(1) Anyone who, in violation of section 46b (1) sentence 1, also in conjunction with section 53b (3) sentence 1, fails to submit a report or who does not submit it correctly, fully or in time shall be punished by a term of imprisonment of up to three years or by a fine.

(2) If the perpetrator acts with negligence, the punishment shall be imprisonment of up to one year or a fine.

Section 55a

Unauthorised use of data on loans of €1.5 million or more

(1) Anyone who uses data in violation of section 14 (2) sentence 10 shall be punished by a term of imprisonment of up to two years or by a fine.

(2) The violation shall be investigated only upon application.

Section 55b

Unauthorised public disclosure of data on loans of 1.5 million euro or more

(1) Anyone who publicly discloses data in violation of section 14 (2) sentence 10 shall be punished by a term of imprisonment of up to one year or by a fine.

(2) If the perpetrator acts for monetary consideration or with the intention of enriching himself or a third party or in order to damage a third party, the punishment shall be a term of imprisonment of up to two years or a fine.

(3) The violation shall be investigated only upon application.

Section 56

Provisions concerning fines

(1) An administrative offence shall be deemed to have been committed by anyone who violates an enforceable order pursuant to section 36 (1) sentence 1, subsection (2) or subsection (3) sentence 1.

(2) An administrative offence shall be deemed to have been committed by anyone who

- 1 in violation of
 - (a) section 2c (1) sentence 1, 5 or sentence 6,
 - (b) section 2c (3) sentence 1 or sentence 4,
 - (c) section 12a (1) sentence 3,

- (d) section 14 (1) sentence 1 first clause, also in conjunction with a regulation pursuant to section 22 sentence 1 number 4, in each case also in conjunction with section 53b (3) sentence 1 number 3,
- (e) section 15 (4) sentence 5,
- (f) section 24 (1) numbers 4, 6, 8, 9, 12, 15, 15a, 16 or number 17,
- (g) section 24 (1) number 5 or number 7, in each case also in conjunction with section 53b (3) sentence 1 number 5,
- (h) section 24 (1) number 10, subsection (1a) or subsection (1b) sentence 2,
- (i) section 24 (3) sentence 1 or subsection (3a) sentence 1 number 1 or number 2 or sentence 2, in each case also in conjunction with sentence 5,
- (j) section 24 (3a) sentence 1 number 3,
- (k) section 24a (1) sentence 1, also in conjunction with subsection (3) sentence 1, or section 24a (4) sentence 1, also in conjunction with sentence 2, in each case also in conjunction with a statutory order pursuant to section 24a (5),
- (l) section 28 (1) sentence 1 or
- (m) section 53a sentence 2 or sentence 5,

in each case also in conjunction with a statutory order pursuant to section 24 (4) sentence 1, fails to give notice or does not do so correctly, in full or in time,

2 violates a regulation pursuant to

- (a) section 2c (1) sentence 3 or
- (b) section 47 (1) number 2 or number 3 or section 48 (1) sentence 1 or
- (c) violates an enforceable order because of such a statutory order

insofar as the statutory order refers, for a specified offence, to this provision to impose a fine,

3 violates an enforceable order pursuant to

- (a) section 2c (1b) sentence 1 or subsection (2) sentence 1,
- (b) section 6a (1),
- (c) section 10i (8) sentence 1 number 1,
- (d) section 12a (2) sentence 1,
- (e) section 23 (1), also in conjunction with section 53b (3) sentence 1 number 3,
- (f) section 25a (2) sentence 2,
- (g) section 25b (4) sentence 1,
- (h) section 25h (6),
- (i) section 26a (2) sentence 1,

- (j) section 45 (1) sentence 1 or sentence 3 first half-sentence or subsection (2) sentence 1 or subsection (5) sentence 5,
 - (k) section 45a (1) sentence 1,
 - (l) section 45b (1) or
 - (m) section 46 (1) sentence 1, also in conjunction with section 53b (3) sentence 1 number 8,
- 4 in violation of section 10i (2) or subsection (3) sentence 3 number 1
- 5 in violation of section 18 (1) sentence 1 grants a loan,
- 6 in violation of section 22i (3), also in conjunction with section 22n (5) sentence 4, provides a service,
- 7 in violation of section 23a (1) sentence 3, also in conjunction with section 53b (3) sentence 1 number 4, fails to draw attention to the fact in question, does not do so correctly, in full, in the prescribed manner or in time,
- 8 in violation of section 23a (2), also in conjunction with section 53b (3) sentence 1 number 4, fails to inform a customer, BaFin or the Deutsche Bundesbank, does not do so correctly, in full, in the prescribed manner or in time,
- 9 in violation of section 24c (1) sentence 1 fails to maintain a data file, does not do so correctly, or does not do so in full,
- 10 in violation of section 24c (1) sentence 5 does not ensure that BaFin has automated access to data at all times,
- 11 in violation of
- (a) section 25 (1) sentence 1 or subsection (2) sentence 1, in each case in conjunction with s statutory order pursuant to subsection (3) sentence 1, in each case also in conjunction with section 53b (3) sentence 1 number 6, or
 - (b) section 26 (1) sentence 1, 3 or sentence 4 or subsection (3),
- fails to submit financial data, a set of annual accounts, a management report, an audit report, a set of group accounts or a group management report, or does not do so correctly, in full or in time,
- 12 in violation of section 25m number 1 establishes or maintains a correspondent banking relationship or any other business relationship with a shell bank,
- 13 in violation of section 25m number 2 sets up or maintains an account,
- 14 violates an enforceable condition pursuant to section 32 (2) sentence 1,
- 15 in violation of
- (a) section 44 (1) sentence 1, also in conjunction with section 44b (1) sentence 1 or section 53b (3) sentence 1 number 8,
 - (b) section 44 (2) sentence 1 or

(c) section 44c (1), also in conjunction with section 53b (3) sentence 1 number 8,
fails to provide information or does not do so correctly, in full or in time, or fails to
submit a document or does not do so correctly, in full or in time,

16 in violation of

(a) section 44 (1) sentence 4, also in conjunction with section 53b (3) sentence 1
number 8,

(b) section 44 (2) sentence 4, subsection (4) sentence 3 or subsection (5) sentence
4,

(c) section 44b (2) sentence 2 or

(d) section 44c (5) sentence 1, also in conjunction with section 53b (3) sentence 1
number 8,

does not acquiesce to a measure

17 in violation of section 44 (5) sentence 1 fails to take a measure specified there or
does not do so in time,

18 in violation of section 53a sentence 4 commences activities.

(3) (Repealed)

(4) An administrative offence shall be deemed to have been committed by any person who
violates Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15
November 2006 on information on the payer accompanying transfers of funds (OJ EU L
345/1) if he/she, when transferring funds, intentionally or negligently

1 in violation of Article 5 (1) fails to ensure that complete information on the payer is
transmitted,

2 in violation of Article 5 (2), also in conjunction with subsection (4), fails to verify the
information specified there on the payer or does not do so in time,

3 in violation of Article 7 (1) fails to transmit the information on the payer or does not do
so correctly or in full,

4 in violation of Article 8 sentence 2 fails to have effective procedures in place to detect
whether the specified information on the payer is missing,

5 in violation of Article 9 (1) sentence 1 fails to reject the transfer order or does not do
so in time or fails to ask for complete information on the payer or does not do so in
time,

6 in violation of Article 11 or Article 13 (5) fails to keep records of any information
received on the payer for at least five years, or

7 in violation of Article 12 fails to ensure that all information received on the payer that
accompanies a transfer of funds is kept with the transfer.

(4a) An administrative offence shall be deemed to have been committed by any person who in violation of Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the community and repealing Regulation (EC) No 2560/2001 (OJ L 266/11 of 30 March 2012), which was amended by Regulation (EU) 260/2012 (OJ L 94/22 of 30 March 2012), intentionally or negligently levies a charge other than that specified there.

(4b) An administrative offence shall be deemed to have been committed by any person who, in violation of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94/22 of 30 March 2012), intentionally or negligently

- 1 in violation of Article 4 (2) sentence 1 fails to ensure that the technical interoperability of the payment system is guaranteed,
- 2 in violation of Article 4 (2) sentence 2 adopts a business rule specified there,
- 3 in violation of Article 4 (3) prevents a credit transfer or direct debit by means of a technical obstacle,
- 4 in violation of Article 5 (1) sentence 1 or paragraph (2) carries out a credit transfer,
- 5 in violation of Article 5 (1) sentence 1 or paragraph (3) sentence 1 carries out a direct debit or
- 6 in violation of Article 5 (8) levies a charge for a reading process specified there.

(4c) An administrative offence shall be deemed to have been committed by any person who, in violation of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201/1 of 27 July 2012), when transferring funds intentionally or negligently

- 1 in violation of Article 7 (1) subparagraph 1 does not accept the task of clearing or
- 2 in violation of Article 7 (2) does not accede to a request or does not accede to it in time, or does not refuse it or does not refuse it in time.

(5) ¹An administrative offence shall be deemed to have been committed by any person who, in violation 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 176/1 of 27 June 2013) or in violation of section 1a in conjunction with Regulation (EU) No 575/2013 intentionally or negligently

- 1 in violation of Article 28 (1) letter (f) reduces or repays the principal amount of common equity tier 1 instruments,
- 2 in violation of Article 28 (1) letter (h) point i makes preferential distributions in respect of common equity tier 1 instruments,

- 3 in violation of Article 28 (1) letter (h) point ii or Article 52 (1) letter (l) point i makes distributions from non-distributable items in respect of common equity or additional tier 1 instruments,
- 4 in violation of Article 52 (1) letter (i) calls, redeems or repurchases additional tier 1 instruments,
5. in violation of Article 63 letter (j) calls, redeems or repurchases tier 2 capital instruments,
- 6 in violation of Article 94 (3) sentence 1 fails to provide notification of the failure to meet the condition pursuant to Article 94 (1) point (b), or does not do so in time,
- 7 in violation of Article 99 (1) fail to submit a report of with regard to the obligations pursuant to Article 92, or does not do so correctly, in full or in time,
- 8 in violation of Article 101 (1) fails to transmit the data specified there, or does not do so correctly, in full or in time,
- 9 in violation of Article 146 fails to provide notification of the failure to meet the requirements specified there, or does not do so in time,
- 10 in violation of Article 175 (5) fails to demonstrate that it has met the requirements specified there, or does not do so correctly, in full or in time,
- 11 in violation of Article 213 (2) sentence 1 fails to demonstrate that it has systems in place, or does not do so correctly or in full,
- 12 in violation of Article 246 (3) sentence 2 fails to provide notification that use is made of the possibility specified in sentence 1, or does not do so correctly or in full,
- 13 in violation of Article 263 (2) sentence 2 fails to provide notification of the facts specified there, or does not do so correctly or in full,
14. in violation of Article 283 (6) fails to provide notification of the failure to meet the requirements specified there, or does not do so in time,
- 15 in violation of Article 292 (3) sentence 1 fails to demonstrate sufficiently or in time that the two periods specified there coincide,
16. in violation of Article 394 (1) to (3) fails to report the information specified there, or does not do so correctly, in full or in time,
- 17 in violation of Article 395 (1) sentence 1, also in conjunction with sentence 2, incurs an exposure,
- 18 in violation of Article 395 (5) sentence 2 fails to report the amount by which the limit is exceeded and the name of the client in question, or does not do so correctly, in full or without delay,
- 19 in violation of Article 396 (1) sentence 1 fails to report the value of the exposure, or does not do so correctly, in full or without delay,
- 20 in violation of Article 405 (1) sentence 1 is exposed to the credit risk of a securitisation position,

- 21 in violation of Article 412 (1) sentence 1 repeatedly or continuously fails to hold liquid assets in the amount specified there
- 22 in violation of Article 414 sentence 1 first clause fails to provide notification that it will not meet, or expects not to meet the requirements specified there, or does not do so correctly, in full or without delay,
- 23 in violation of Article 414 sentence 1 second clause fails to submit a plan, or does not do so correctly, in full or in time,
- 24 in violation of Article 415 (1) or (2) fails to report the information specified there on the liquidity situation, or does not do so correctly, in full or in time,
- 25 in violation of Article 430 (1) sentence 1 or subparagraph 2 fails to submit information on the leverage ratio and its components, or does not do so correctly or in full,
- 26 in violation of Article 431 (1) fails to publicly disclose the information specified there, or does not do so correctly, in full or in time,
- 27 in violation of Article 431 (2) fails to disclose the information contained in the permissions specified there, or does not do so correctly, in full or in time,
- 28 in violation of Article 431 (3) subparagraph 2 sentences 1 and 2 fails to publicly disclose the information specified there, or does not do so correctly, in full or in time
- 29 in violation of Article 451 (1) fails to disclose the information specified there, or does not do so correctly, in full or in time,

²The provisions of sentence 1 shall also apply to a credit institution or a financial services institution within the meaning of section 1a.

(6) The administrative offence may lead

- 1 in the cases specified in subsection (2) number 3 letters (a) and (f), number 4 and number 12, in subsection (5) numbers 1 to 5, 7, 8, 16, 17, 20, 21 and 24 to 29 to the imposition of a fine of up to €5 million,
2. in the cases specified in subsections (1) and (2) number 3 letter (k) to the imposition of a fine of up to €500,000,
3. in the cases specified in subsection (2) number 1 letters (a), (b) and (h), number 2 letter (a), number 3 letters (b) to (e), (g) to (j) and (l), numbers 5 to 10 and 12 to 14 to the imposition of a fine of up to €200,000 and
4. in the other cases to the imposition of a fine of up to €100,000.

(7) ¹The fine will exceed the economic advantage that the perpetrator derived from the administrative offence. ²If the maximum amount pursuant to subsection (6) is not sufficient for this, 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.

³This is without prejudice to section 17 (4) of the Act on Breaches of Administrative Regulations.

(8) ¹The annual net turnover within the meaning of subsection (7) sentence 2 number 1 is the total amount of the income specified in section 34 (2) sentence 1 number 1 letters (a) to (e) of the Regulation on the Accounting of Credit Institutions and Financial Services Institutions in the version in force including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable as set out in Article 316 of Regulation (EU) No 575/2013, less turnover tax and other taxes levied directly in respect of this income. ²If the undertaking in question is a subsidiary, the amount of the fine will be based on the annual net turnover that was reported in the consolidated account of the ultimate parent undertaking in the preceding business year.

Sections 57 and 58 (Repealed)

Section 59 Fines imposed on undertakings

Section 30 of the Act on Breaches of Administrative Regulations shall also apply to undertakings within the meaning of section 53b (1) sentence 1 and (7) sentence 1 operating through a branch or by providing cross-border services in Germany.

Section 60 Competent administrative authority

The administrative authority within the meaning of section 36 (1) number 1 of the Act on Breaches of Administrative Regulations is BaFin.

Section 60a Involvement of BaFin and information in criminal cases

(1) ¹In criminal proceedings initiated against the proprietors, senior managers, or members of the administrative or supervisory bodies of institutions or financial holding companies as well as against holders of significant holdings in institutions or their legal representatives or general partners on account of violating their professional duties or committing other criminal acts in carrying out or in connection with carrying out a trade or operating any other kind of business undertaking, as well as in criminal proceedings relating to criminal acts pursuant to section 54, the court, the criminal prosecution authority or the penal enforcement authority will, if a public action is brought, transmit to BaFin

- 1 the indictment or the petition in lieu of an indictment;
- 2 the application for the issue of a fixed penalty order, and
- 3 the decision concluding the proceedings together with the grounds for the decision;

if an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the fact that an appeal has been lodged. ²In proceedings concerning criminal acts committed through negligence, the information to be transmitted under numbers 1 and 2 shall be transmitted only if the transmitting agency believes that decisions or other measures need to be taken by BaFin without delay.

(1a) ¹In criminal proceedings relating to criminal acts pursuant to section 54, the public prosecutor's office will inform BaFin as soon as preliminary investigations are initiated as long as this is not expected to jeopardise the purpose of the investigation. ²If the public prosecutor's office intends to discontinue the proceedings, it will be required to hear BaFin.

(2) ¹If, in criminal proceedings, facts become otherwise known which point to irregularities in an institution's business operations, and if the transmitting agency believes that these need to be made known to BaFin so that it can take measures pursuant to this Act, the court, the criminal prosecution authority or the penal enforcement authority will likewise transmit these facts, unless it is clear to the transmitting agency that protecting the interests of the party concerned should take precedence. ²Due consideration shall thereby be given to how well substantiated the findings to be transmitted are.

(3) ¹Upon request, BaFin shall be granted access to the files unless it is clear to the party granting access to the files that protecting the interests of the party concerned should take precedence. ²Subsection (2) sentence 2 shall apply *mutatis mutandis*.

Section 60b

Publication of measures

(1) ¹BaFin 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, and any decision on an administrative pecuniary penalty that has become non-appealable pursuant to subsections (2) to (4), and in doing so will also provide information on the type and nature of the breach. ²This shall be without prejudice to BaFin's rights pursuant to section 37 (1) sentence 3.

(2) Publication of a decision on an administrative pecuniary penalty that has become non-appealable pursuant to section 56 (4c) may not contain any personal data.

(3) A decision on an administrative pecuniary penalty that has become non-appealable pursuant to section 56 (4c) may not be published pursuant to subsection (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 damage to the institutions or natural persons involved.

(4) ¹BaFin will publish on an anonymous basis a measure that has become legally enforceable or a decision on an administrative pecuniary penalty that has become non-appealable with the exception of decisions on administrative pecuniary penalties pursuant to section 56 (4c) where publication pursuant to subsection (1)

- 1 injures the personal rights of natural persons or publication of personal data would be disproportionate for other reasons,
- 2 would seriously jeopardise the stability of the financial markets of the Federal Republic of Germany or one or more EEA states or the continuation of a criminal investigation, or
- 3 would cause disproportionate damage to the institutions or natural persons involved.

²Notwithstanding sentence 1, BaFin may, in the cases referred to in sentence 1 numbers 2 and 3, postpone publication pursuant to subsection (1) until such time as the reasons for publication on an anonymous basis no longer exist.

(5) The measures and decisions on administrative pecuniary penalties within the meaning of subsection (1) with the exception of decisions on administrative pecuniary penalties pursuant to section 56 (4c) shall remain published on BaFin's website for at least five years from when the measure becomes legally enforceable or when the decision on an administrative pecuniary penalty becomes non-appealable.

Part VIII

Transitional and final provisions

Section 61

Authorisation for existing credit institutions

¹If a credit institution was permitted to conduct banking business on the scale specified in section 1 (1) at the time this Act came into force, the authorisation required pursuant to section 32 shall be deemed to have been granted. ²The period specified in section 35 (1) shall begin with the entry into force of this Act.

Section 62

Transitional provisions

(1) ¹The legislation already existing in the field of banking and the orders issued by virtue of the existing legislation shall remain in force, except as otherwise provided by this Act. ²This shall be without prejudice to legislation prescribing more extensive requirements than those embodied in this Act for the business activities of certain categories of credit institutions.

(2) Functions and powers assigned under Federal legislation to the banking supervisory authority shall devolve upon BaFin.

(3) This shall be without prejudice to the responsibilities of the German state governments for recognition as a relocated financial institution pursuant to the Thirty-fifth Regulation Implementing the Conversion Act (*Fünfunddreissigste Durchführungsverordnung zum Umstellungsgesetz*), for confirmation of the conversion account and the old bank account, and for functions and powers under the Securities Validation Acts (*Wertpapierbereinigungsgesetze*) and the Act on the Validation of German External Bonds (*Bereinigungsgesetz für deutsche Auslandsbonds*).

Section 63

(Repeal of and amendments to legal provisions)

Section 63a

Special provisions relating to the territory specified in Article 3 of the Unification Treaty (*Einigungsvertrag*)

(1) If a credit institution domiciled in the German Democratic Republic including Berlin (East) was permitted on 1 July 1990 to conduct banking business on the scale specified in section 1 (1), the authorisation required pursuant to section 32 shall be deemed to have been granted.

(2) BaFin may exempt certain categories of credit institutions or individual credit institutions domiciled in the territory specified in Article 3 of the Unification Treaty from obligations under this Act if this appears appropriate for special reasons, in particular because the law of the

territory specified in Article 3 of the Unification Treaty has not yet been brought into line with the law of the Federal Republic of Germany.

(3) (Repealed)

Section 64

Successor undertakings to Deutsche Bundespost

(1) ¹From 1 January 1995 the authorisation pursuant to section 32 shall be deemed to have been granted to POSTBANK, a successor undertaking to Deutsche Bundespost. ²For the purpose of consolidation pursuant to section 19 (2) sentence 1, shares which are held in the successor undertakings to Deutsche Bundespost by the Bundesanstalt für Post und Telekommunikation Deutsche Bundespost shall be disregarded until 31 December 2002.

Section 64a
(Repealed)

Section 64b
(Repealed)

Section 64c
(Repealed)

Section 64d
(Repealed)

Section 64e

Transitional provisions for the Sixth Act Amending the Banking Act (*Sechste Gesetz zur Änderung des Gesetzes über das Kreditwesen*)

(1) For a credit institution which on 1 January 1998 is authorised to conduct business as a deposit-taking credit institution, the authorisation to conduct principal broking services, underwriting business, prepaid card business and network money business and to provide financial services shall be deemed to have been granted as of this date.

(2) ¹Financial services institutions and securities trading banks which were legitimately operating on 1 January 1998 without authorisation from BaFin shall report their activities which require authorisation under this Act and their intention to continue such activities to BaFin and the Deutsche Bundesbank by 1 April 1998. ²If the report has been submitted by this date, the authorisation pursuant to section 32 shall be deemed to have been granted for the scale of activities specified. ³BaFin will confirm the specified authorisable activities within three months of receipt of the report. ⁴Within three months of receipt of BaFin's confirmation the institution shall submit a supplementary report to BaFin and the Deutsche Bundesbank which satisfies the material requirements under section 32. ⁵If the supplementary report is

not submitted in time, BaFin may revoke the authorisation granted pursuant to sentence 2; this shall be without prejudice to section 35.

(3) ¹Section 35 (2) number 3 in conjunction with section 33 (1) sentence 1 number 1 letters (a) to (c) and section 24 (1) number 9 on the initial capital shall apply only as from 1 January 2003 to institutions for which authorisation is deemed to have been granted pursuant to subsection (2). ²As long as the initial capital of the institutions described in sentence 1 is smaller than the amount required under section 33 (1) sentence 1 number 1, it may not fall below the average level over the preceding six months; the average level shall be calculated every six months and reported to BaFin. ³If the average level pursuant to sentence 2 is undershot, BaFin may revoke the authorisation. ⁴Section 10 (1) to (8) and sections 10a, 11 and 13 to 13b shall apply to institutions described in sentence 1 only as from 1 January 1999, unless they establish a branch or provide cross-border services in other EEA states pursuant to section 24a. ⁵Securities trading firms for which authorisation is deemed to have been granted pursuant to subsection (2) and which do not apply section 10 (1) to (8) and sections 10a, 11 and 13 to 13b shall inform their customers that they may not establish a branch or provide cross-border services in other EEA states pursuant to section 24a. ⁶Institutions for which authorisation is deemed to have been granted pursuant to subsection (2) shall notify BaFin and the Deutsche Bundesbank as to whether they apply section 10 (1) to (8) and sections 10a, 11 and 13 to 13b.

(4) (Repealed)

(5) (Repealed)

Section 64f

Transitional provisions for the Fourth Financial Market Promotion Act (*Vierte Finanzmarktförderungsgesetz*)

(1) For a credit institution which on 1 July 2002 is authorised to conduct business as a deposit-taking credit institution, the authorisation to conduct credit card business shall be deemed to have been granted as of this date.

(2) ¹Financial services institutions and securities trading banks which were legitimately operating on 1 July 2002 without authorisation from BaFin pursuant to section 1 (1a) sentence 2 number 8 shall report their activities which require authorisation and their intention to continue such activities to BaFin and the Deutsche Bundesbank by 1 November 2002. ²Section 64e (2) sentences 2 to 5 shall apply *mutatis mutandis*.

(3) to (6) (Repealed)

Section 64g

Transitional provisions regarding the Act Implementing the Financial Conglomerates Directive (*Finanzkonglomeraterichtlinie-Umsetzungsgesetz*)

(1) (Repealed)

(2) ¹Until such time as the statutory order pursuant to section 13c (1) sentence 2 has been issued, all significant intra-group transactions conducted with mixed-activity holding companies or their subsidiaries during a calendar year shall be reported to BaFin and the Deutsche Bundesbank before 16 January of the following year. ²Intra-group transactions notably include

- 1 loans,
- 2 sureties, guarantees and other off-balance-sheet transactions,
- 3 transactions relating to own funds components within the meaning of sections 10,10a, 53c and 104g of the Insurance Supervision Act,
- 4 investments,
- 5 reinsurance transactions,
- 6 cost-sharing agreements.

³An intra-group transaction is significant if the individual transaction equals or exceeds at least 5% of the capital requirement at group level. ⁴If one or more group undertakings conduct several transactions with another group undertaking during any given financial year, these must be aggregated for each counterparty, even if the individual transaction does not equal 5% of the capital requirement at group level.

(3) Until such time as the statutory order pursuant to section 24 (4) has been supplemented,

- 1 in connection with reports pursuant to section 24 (3a) sentence 1 number 1,
 - (a) the declarations prescribed by section 8 sentence 2 number 2 of the Reports Regulation (*Anzeigenverordnung*) of 29 December 1997 (Federal Law Gazette I, page 3372) as last amended by Article 8 of the Act of 15 August 2003 (Federal Law Gazette I, page 1657) shall be submitted for assessing the trustworthiness of persons who are actually to manage the business of a financial holding company or a mixed financial holding company;
 - (b) the documentation specified in section 8 sentence 2 number 1 of the Reports Regulation of 29 December 1997 (Federal Law Gazette I, page 3372) as last amended by Article 8 of the Act of 15 August 2003 (Federal Law Gazette I, page 1657) shall be appended for the purpose of assessing the professional qualifications of persons who are actually to manage the business of a financial holding company or a mixed financial holding company;
- 2 section 27 of the Reports Regulation of 29 December 1997 (Federal Law Gazette I, page 3372) as last amended by Article 8 of the Act of 15 August 2003 (Federal Law

Gazette I, page 1657) shall apply *mutatis mutandis* to reports by a mixed financial holding company pursuant to section 12a (1) sentence 3.

(4) (Repealed)

Section 64h

Transitional provisions regarding the Act Implementing the recast Banking Directive and the recast Capital Adequacy Directive (*Gesetz zur Umsetzung der neu gefassten Bankenrichtlinie und der neu gefassten Kapitaladäquanzrichtlinie*)

(1) (Repealed)

(2) (Repealed)

(3) (Repealed)

(4) (Repealed)

(5) Institutions may use personal data which they have collected before 1 January 2007 pursuant to section 10 (2).

(6) (Repealed)

(7) Section 2 (8a) shall apply no later than until 31 December 2014.

Section 64i

Transitional provisions regarding the Act Implementing the Markets in Financial Instruments Directive (*Finanzmarktrichtlinie-Umsetzungsgesetz*)

(1) ¹In the case of an undertaking which was authorised to conduct one or more kinds of banking business or financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 on 1 November 2007, authorisation to provide investment advice shall be deemed to have been granted as of that date. ²In the case of a financial services institution which does not come under sentence 1, authorisation to provide investment advice shall be deemed to have been granted provisionally as of this date until BaFin renders a decision if the institution submitted a complete application for authorisation by 31 January 2008 pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4).

(2) In the case of an undertaking which was authorised to conduct one or more kinds of banking business or financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 on 1 November 2007 and has hitherto traded in financial instruments for its own account, authorisation to conduct proprietary business shall be deemed to have been granted as of that date.

(3) Subsection (1) sentence 2 shall apply *mutatis mutandis* to an undertaking which became a financial services institution or a securities trading bank on 1 November 2007 by virtue of the expansion of the definition of financial instruments in section 1 (11).

(4) ¹In the case of an undertaking which was authorised to engage in investment broking on 1 November 2007, authorisation to operate a multilateral trading system shall be deemed to have been granted as of that date if the institution submitted a complete application for authorisation by 31 January 2008 pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4), and BaFin did not raise an objection thereto within three months of receiving the complete application for authorisation. ²BaFin may raise an objection if, in the case of an orderly application for authorisation pursuant to section 32, it would have the right to refuse to grant authorisation pursuant to section 33.

(5) In the case of an undertaking which was authorised to engage in contract broking on 1 November 2007, subsection (1) sentence 2 shall apply *mutatis mutandis* to authorisation to engage in placement business.

Section 64j

Transitional provisions regarding the Annual Tax Act 2009 (*Jahressteuergesetz 2009*)

(1) ¹In the case of an undertaking which was authorised to conduct one or more kinds of banking business within the meaning of section 1 (1) or financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 on 25 December 2008, authorisation to engage in factoring and finance leasing shall be deemed to have been granted as of that date.

(2) ¹For financial services institutions that do not come under subsection (1), authorisation to engage in factoring and finance leasing shall be deemed to have been granted as of 25 December if they reported their engagement in these activities by 31 January 2009. ²For undertakings within the meaning of sentence 1 which at the time this Act enters into force do not exceed at least two of the three size criteria stipulated in section 267 (1) of the Commercial Code, a longer period shall apply until 31 December 2009. ³The report must contain the information pursuant to section 32 (1) sentence 2 numbers 2 and 6 letters (a) and (b), the annual accounts for the past financial year or – if the latter were not yet to be drawn up pursuant to the periods specified therefor – for the preceding financial year or – if no annual accounts were yet to be drawn up – the opening balance sheet and a quarterly profit and loss account as well as a current excerpt from the commercial register and the trade registration pursuant to section 14 (1) sentence 1 of the Industrial Code.

Section 64k

Transitional provision regarding the Act Implementing the Acquisition Directive (*Gesetz zur Umsetzung der Beteiligungsrichtlinie*)

The provisions of this Act in the version in force up to 17 March 2009 shall apply to procedures pursuant to section 2c under which a report has been submitted by 17 March 2009.

Section 64l

Transitional provision regarding authorisation to conduct asset management

¹For an institution which is authorised to provide principal broking services, proprietary trading services or financial portfolio management services on 25 March 2009, authorisation to provide asset management services shall be deemed to have been granted as of that date. ²Authorisation to provide asset management services is not required for products for which a sales prospectus was published by 24 September 2008.

Section 64m

(Repealed)

Section 64n

Transitional provision regarding the Act Reforming the Laws on Intermediaries for Financial Investment and on Investment Products (*Gesetz zur Novellierung des Finanzanlagenvermittler- und Vermögensanlagenrechts*)

For an undertaking which became a financial services institution on 1 June 2012 by virtue of the expansion of the definition of financial instruments in section 1 (11) sentence 1, authorisation shall be deemed to have been granted provisionally as of this date until BaFin renders a decision if the undertaking submitted a complete application for authorisation by 31 December 2012 pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4).

Section 64o

Transitional provisions regarding the Act Implementing the European Market Infrastructure Regulation (EMIR) (*EMIR-Ausführungsgesetz*)

(1) ¹For credit institutions which were authorised pursuant to section 32 to conduct the business of a central counterparty pursuant to section 1 (1) sentence 2 number 12 on 16 February 2013, section 2 (9a) and (9b) shall not apply until authorisation is granted pursuant to Article 14 in conjunction with Article 17 of Regulation (EU) No 648/2012. ²Section 37 (1) sentence 1 and section 54 (1a) shall not apply to credit institutions referred to in sentence 1 with regard to their business as a central counterparty within the meaning of section 1 (1) sentence 2 number 12 until authorisation is granted or finally and absolutely refused pursuant to Article 14 in conjunction with Article 17 of Regulation (EU) No 648/2012. ³Insofar as the authorisation pursuant to section 32 covers conducting banking business pursuant to

section 1 (1) sentence 2 numbers 1 to 10 or providing financial services pursuant to section 1 (1a), it shall not be affected by the granting or final and absolute refusal of authorisation pursuant to Article 14 in conjunction with Article 17 of Regulation (EU) No 648/2012.

(2) Section 29 (1) sentence 2 in the version in force from 16 February 2013 shall apply for the first time to the auditing of the annual accounts for a financial year beginning after 31 December 2012.

(3) Section 29 (1a) in the version in force from 16 February 2013 shall apply for the first time to the auditing of the annual accounts for a financial year beginning after the date on which the credit institution received authorisation pursuant to Article 14 in conjunction with Article 17 of Regulation (EU) No 648/2012.

Section 64p

Transitional provision regarding the High-frequency Trading Act (*Hochfrequenzhandelsgesetz*)

¹For an undertaking that became a financial services institution on 15 May 2013 by virtue of the expansion of the term proprietary trading in section 1 (1a) sentence 2 number 4, authorisation to conduct proprietary trading and proprietary business within the meaning of section 32 (1a) shall be deemed to have been granted provisionally as of this date if the undertaking submitted a complete application for authorisation by 14 November 2013 pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4). ²For an undertaking that is located outside Germany and is not an undertaking within the meaning of section 53b (1) sentences 1 and 2, sentence 1 shall apply with the proviso that the complete application for authorisation be submitted by 14 February 2014.

Section 64q

Transitional provision regarding the Act Implementing the AIFM Directive (*AIFM-Umsetzungsgesetz*)

(1) Section 1 (1a) in the version in force up to 21 July 2013 shall continue to apply to financial services institutions which, by virtue of the amendment to section 1 and the entry into force of the Capital Investment Code, are deemed to be domestic management companies within the meaning of section 17 of the Capital Investment Code or units in investment funds within the meaning of section 1 (1) of the Capital Investment Code and which meet the criteria in section 353 (1) to (3).

(2) For financial services institutions which, by virtue of the amendment to section 1 and the entry into force of the Capital Investment Code, are deemed to be domestic management companies within the meaning of section 17 of the Capital Investment Code or units in investment funds within the meaning of section 1 (1) of the Capital Investment Code, this Act shall continue to apply in the version in force up to 21 July 2013 until submission of the application for authorisation pursuant to section 22 of the Capital Investment Code or, if the

criteria in section 2 (4), (4a), (4b) or (5) of the Capital Investment Code are met, until registration pursuant to section 44 of the Capital Investment Code.

Section 64r

Transitional provisions regarding the Act Implementing the Capital Requirements

Directive IV (*CRD IV-Umsetzungsgesetz*)

(1) ¹Section 8 (3) sentence 7 in the version in force from 1 January 2014 shall apply as from 1 January 2015 or, if a legal act is adopted pursuant to Article 151 (2) of Directive 2013/36/EU, as from the expiry of the period specified therein. ²Section 8 (3) sentence 7 in the version in force up to 31 December 2013 shall continue to apply until 31 December 2014 or the expiry of the period specified in the aforementioned legal act.

(2) Section 8f shall apply as from 1 January 2015 or, if a legal act is adopted pursuant to Article 151 (2) of Directive 2013/36/EU, as from the expiry of the period specified therein, but at the very latest as from 1 January 2017.

(3) Section 10 (3) sentence 2 number 5 in the version in force from 1 January 2014 shall only apply until 1 January 2016.

(4) The deduction of the aggregation difference pursuant to section 10a (4) sentence 4 in the version in force from 1 January 2014 shall be made in the period from 1 January 2014 until 31 December 2017 as follows:

- 1 for the period from 1 January 2014 until 31 December 2014, 80% of the group's Tier 1 capital pursuant to Article 25 of Regulation (EU) No 575/2013 and 20% of the group's Common Equity Tier 1 capital pursuant to Article 50 of Regulation (EU) No 575/2013;
- 2 for the period from 1 January 2015 until 31 December 2015, 60% of the group's Tier 1 capital pursuant to Article 25 of Regulation (EU) No 575/2013 and 40% of the group's Common Equity Tier 1 capital pursuant to Article 50 of Regulation (EU) No 575/2013;
- 3 for the period from 1 January 2016 until 31 December 2016, 40% of the group's Tier 1 capital pursuant to Article 25 of Regulation (EU) No 575/2013 and 60% of the group's Common Equity Tier 1 capital pursuant to Article 50 of Regulation (EU) No 575/2013;
- 4 for the period from 1 January 2017 until 31 December 2017, 20% of the group's Tier 1 capital pursuant to Article 25 of Regulation (EU) No 575/2013 and 80% of the group's Common Equity Tier 1 capital pursuant to Article 50 of Regulation (EU) Nr. 575/2013.

(5) ¹Sections 10c and 10d in the version in force from 1 January 2014 shall apply in full for the first time as from 1 January 2019. ²For the period from 1 January 2016 until 31 December 2018, the provisions referred to in sentence 1 shall apply subject to the following provisos:

- 1 For the period from 1 January 2016 until 31 December 2016

- (a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0.625% of the total of the risk-weighted exposure amounts of the institution, calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013;
- (b) the institution-specific countercyclical capital buffer shall be 25% of the institution-specific countercyclical capital buffer required pursuant to section 10d, ie 0.625% of this total sum at the most, so that the required combined capital buffer requirement less the amount allocated to the systemic risk capital buffer is between 0.625% and 1.25% of the total of the risk-weighted exposure amounts of the institution.

2 For the period from 1 January 2017 until 31 December 2017

- (a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1.25% of the total of the risk-weighted exposure amounts of the institution, calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013;
- (b) the institution-specific countercyclical capital buffer shall be 50% of the institution-specific countercyclical capital buffer required pursuant to section 10d, ie 1.25% of this total sum at the most, so that the required combined capital buffer requirement less the amount allocated to the systemic risk capital buffer is between 1.25% and 2.50% of the total of the risk-weighted exposure amounts of the institution.

3 For the period from 1 January 2018 until 31 December 2018

- (a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1.875% of the total of the risk-weighted exposure amounts of the institution, calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013;
- (b) the institution-specific countercyclical capital buffer shall be 75% of the institution-specific countercyclical capital buffer required pursuant to section 10d, ie 1.875% of this total sum at the most, so that the required combined capital buffer requirement less the amount allocated to the systemic risk capital buffer is between 1.875% and 3.750% of the total of the risk-weighted exposure amounts of the institution.

(6) Section 10e (5) in the version in force from 1 January 2014 shall apply for the first time as from 1 January 2015.

(7) ¹Section 10f (1) in the version in force from 1 January 2014 shall apply in full for the first time as from 1 January 2019. ²For the period from 1 January 2016 until 31 December 2018, the provision referred to in sentence 1 shall apply subject to the following provisos:

- 1 For the period from 1 January 2016 until 31 December 2016, the G-SII buffer shall be 25% of the G-SII buffer required pursuant to section 10f (1) sentence 2;

- 2 For the period from 1 January 2017 until 31 December 2017, the G-SII buffer shall be 50% of the G-SII buffer required pursuant to section 10f (1) sentence 2;
- 3 For the period from 1 January 2018 until 31 December 2018, the G-SII buffer shall be 75% of the G-SII buffer required pursuant to section 10f (1) sentence 2.

(8) Section 10g in the version in force from 1 January 2014 shall apply for the first time as from 1 January 2016.

(9) Section 10i in the version in force from 1 January 2014 shall apply for the period from 1 January 2016 until 31 December 2018 pursuant to the buffer amounts set out in subsections (5) and (7).

(10) ¹Section 14 (1) in the version in force from 1 January 2014 shall apply for the transitional periods referred to below subject to the following provisos in each case:

- 1 for the period from 1 January 2014 until 31 December 2014, the reporting threshold for loans of €1.5 million or more shall be €1.5 million; this shall also apply to reporting of syndicated loans;
- 2 for the period from 1 January 2014 until 31 December 2016
 - (a) commitments,
 - (b) shares in other undertakings, irrespective of how they are shown in the balance sheet,
 - (c) balance sheet assets which are deducted from Common Equity Tier 1 capital pursuant to Article 36 in conjunction with Article 19 (2) letter (a) of Regulation (EU) No 575/2013, and
 - (d) securities in the trading portfolio

shall not be deemed to be exposures and loans within the meaning of section 14 (1); this shall be without prejudice to section 20.

²The undertakings participating in the reporting procedure for loans of €1.5 million or more are permitted as from 1 July 2014 to transmit to the Deutsche Bundesbank the master data that are necessary to capture the potentially newly reportable borrowers of loans of €1.5 million or more upon expiry of the transitional period pursuant to sentence 1 number 1.

(11) Section 25 (1) sentence 2 and (2) sentence 2 in the version in force from 1 January 2014 shall apply for the first time as from 1 January 2015.

(12) The notifications pursuant to section 24 (1) number 16 and (1a) number 5 on the modified balance sheet capital ratio shall be submitted for the final time for the capital situation on 31 December 2014 or for the changes that have occurred up to this date.

(13) ¹Section 25c (2) in the version in force from 1 January 2014 shall not apply, subject to sentence 2, for senior manager mandates and for administrative and supervisory body mandates which the senior manager already held on 31 December 2013. ²Section 25c (2) shall apply as from 1 July 2014 for credit institutions from which systemic risk within the meaning of section 48b (2) may emanate on the basis of an assessment made by BaFin pursuant to section 48b (3).

(14) ¹Section 25d (3) in the version in force from 1 January 2014 shall not apply, subject to sentence 2, for senior manager mandates and for administrative and supervisory body mandates which the member of the administrative and supervisory body already held on 31 December 2013. ²Section 25d (3) shall apply as from 1 July 2014 for credit institutions from which systemic risk within the meaning of section 48b (2) may emanate on the basis of an assessment made by BaFin pursuant to section 48b (3).

(15) ¹CRR institutions shall disclose the information referred to in section 26a (1) sentence 2 numbers 1 to 3 for the first time as of 1 July 2014 and annually thereafter. ²In addition, section 26a (1) sentences 2 and 3 shall apply as from 1 January 2015. ³If the European Commission issues a legal act that defers the disclosure obligation pursuant to Article 89 of Directive 2013/36/EU, section 26a (1) sentences 2 and 3 shall apply for the first time as from 1 January 2016; this shall be without prejudice to sentence 1.

(16) ¹Section 53b (4), (5) and (8) in the version in force from 1 January 2014 shall apply as from 1 January 2015 or, where a legal act is adopted pursuant to Article 151 (2) of Directive 2013/36/EU, as from the expiry of the period specified therein. ²Section 53b (4), (5) and (8) in the version in force up to 31 December 2013 shall continue to apply until 31 December 2014 or the expiry of the period specified in the aforementioned legal act.

(17) Where the transitional provisions of Article 484 (5) of Regulation (EU) No 575/2013 are applied, the rules and regulations contained in the Regulation Governing Surcharges (*Zuschlagsverordnung*) in the revised version published in the Federal Law Gazette III, Section 7610-2-6, which was amended by Article 2 of the Regulation of 20 December 1984 (Federal Law Gazette I page 1727) and repealed by Article 7 (1) of the Act of 28 August 2013 (Federal Law Gazette I page 3395), shall continue to apply until 31 December 2021.

(18) For credit institutions with an exclusive authorisation to conduct the business of a central counterparty pursuant to section 1 (1) sentence 2 number 12, the provisions of this Act and the statutory orders issued on the basis of this Act shall continue to apply in the version in force up to 31 December 2013 in each case until such time as a decision is made on the granting of authorisation pursuant to Article 17 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ EU L 201/1 of 27 July 2012).

Section 64s

Transitional provision regarding the Act on Ringfencing and Recovery and Resolution Planning for Credit Institutions (*Gesetz zur Abschirmung von Risiken und zur Planung der Sanierung und Abwicklung von Kreditinstituten*)

(1) For an undertaking that is deemed to be a financial services institution on 1 July 2015 pursuant to section 1 (1a) sentence 3, the authorisation shall be deemed to have been granted provisionally as of this date until BaFin renders a decision if the undertaking submits a complete application for authorisation within twelve months following the entry into force of this provision pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4).

(2) ¹Section 1 (1a) sentences 3 and 4, section 3 (2) and (3) and section 25f shall apply only as from 1 July 2015. ²Section 3 (4) shall apply only as from 1 July 2016.

**Section 65
(Entry into force)**