

German *Bundestag* Approves Law Regulating High Frequency Trading

If you have any questions regarding the matters discussed in this memorandum, please contact **Matthias Horbach** at +49.69.74220.118 or matthias.horbach@skadden.com, or call your regular Skadden contact.

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The lower chamber of German parliament (*Bundestag*) approved last week a draft act regulating high frequency trading in Germany. The chamber of the federal states (*Bundesrat*) is scheduled to vote on the act on March 22. If approved, the act will become law within a few weeks after the vote.

The act provides, among other things:

1. License Requirement

Direct and indirect participants in a German organized market or multilateral trading system will be required to hold a financial services license if they purchase or sell financial instruments on their own account using computers that in fractions of seconds recognize market price changes, make trading decisions by themselves in accordance with predetermined parameters, and by themselves determine, adjust and transmit the order parameters relating thereto. The license requirement also applies to participants in organized markets or multilateral trading systems that trade entirely at their own initiative and do not thereby render a service to others.

According to the legislative materials, indirect participants are those entities that, on the basis of an agreement, use the trading ID of a market participant for the direct electronic transmission of orders to the exchange.

2. Grandfathering Rule

The act contains a transitional rule according to which entities that become financial services providers as a result of the new legislation shall be deemed to hold the required license on a preliminary basis if they submit a complete application for obtaining the license within three months after the act becomes law.

Please let us know if you would like to discuss these issues in detail, in particular to what extent your business or DMA trading would be affected and which alternative structures are available that would not be covered by the new law (e.g., back-to-back arrangements with a broker that holds a financial services license).

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