

THE INITIAL PUBLIC
OFFERINGS
LAW REVIEW

Editor
David J Goldschmidt

THE LAWREVIEWS

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The Initial Public Offerings Law Review
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For further information please email
Nick.Barette@thelawreviews.com

THE INITIAL PUBLIC
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LAW REVIEW

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David J Goldschmidt

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PUBLISHER
Gideon Robertson

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Nick Barette

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PREFACE

Welcome to the inaugural edition of *The Initial Public Offerings Law Review*. While it is largely agreed that the first ‘modern’ initial public offering (IPO) was by the Dutch East India Company (VOC) in 1602, IPOs now take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Several of the earliest exchanges are still at the forefront of the global IPO market, such as the NYSE and LSE, however, the world’s major stock exchanges now are scattered around the globe, and many of them are now public companies themselves. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market. For example, markets in the Asia-Pacific region, including Hong Kong, Shanghai and Tokyo, have enjoyed a significantly stronger presence in the global IPO arena in recent years owing to economic growth in the Asian markets.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different between jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware of the requirements from the outset as well as potential pitfalls that may derail the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply.

Virtually all markets around the globe have experienced significant volatility in recent years. In 2016, the uncertainty surrounding the US presidential election, the unexpected outcome of the Brexit vote and numerous other geopolitical issues facing regions throughout the world furthered the general decline in both overall deal count and proceeds raised. Moving forward, however, many regions have a healthy IPO pipeline for the coming 12 months, including many household names.

The Initial Public Offerings Law Review seeks to introduce the reader to the global IPO regulatory environment and main stock exchanges in 16 different jurisdictions. Each chapter provides a general overview of the IPO process in the region, addresses regulatory and exchange requirements and presents key offering considerations. We hope this inaugural edition of *The Initial Public Offerings Law Review* introduces the reader to the intricacies of taking a company public in these jurisdictions and serves as a helpful handbook for companies, directors and managers.

David J Goldschmidt

Skadden, Arps, Slate, Meagher & Flom LLP
New York
March 2017

GERMANY

*Stephan Hutter and Katja Kaulamo*¹

I INTRODUCTION

The German initial public offerings (IPO) market has been developing in line with overall European market trends since the mid-1990s, experiencing a number of peaks and downturns and being characterised by sustained market volatility as a result of the European financial market crisis in 2007, and related political challenges to the fabric of the European Union.

While there was only limited IPO activity in Germany during the first half of the 1990s, the IPO of Deutsche Telekom AG in 1996 ignited significant equity capital markets activity in Germany. This growth phase was characterised by, at that time, unprecedented and widespread interest in IPO activity across all investor segments, including retail demand, and was, to a large extent, driven by technology companies and internet start-ups. For such ‘new economy’ companies, Deutsche Börse AG had introduced a new market segment called ‘Neuer Markt’ (New Market) on the Frankfurt Stock Exchange (FSE), which was intended to replicate in Germany many of the characteristics of the NASDAQ stock market in the United States. With the New Market introducing, for the first time in Germany, international market-type disclosure standards and transaction structures, it experienced rapid growth that led to a total of more than 400 IPOs with an aggregate emission volume of more than €50 billion during the five-year period between 1996 and 2001. In 2002, the number of IPOs in Germany dropped significantly and, following continued market downturn, the New Market was shut down in June 2003.

While the IPO market recovered in the period from 2004 to 2007, following the closure of the New Market segment and the failure of many of the new economy start-ups listed thereon, investor sentiment in Germany changed significantly – with institutional investors becoming more risk-averse and retail demand virtually disappearing. Following the European financial crisis in 2007, the German equity capital markets were characterised by significant market volatility – in line with almost all European markets – resulting in only a small number of IPOs and an annual total offering volume of approximately €5–6 billion in recent years. Notwithstanding increasing overall stock market activity in recent years and months, it is expected that IPO activity in Germany will generally remain at reduced levels, with investors favouring large liquid and already publicly traded stocks over small to medium-sized IPOs, and private equity firms exiting from their investments in dual-track processes that have historically often resulted in a trade sale. The exception to that general trend will possibly be additional spin-offs from large German corporates in connection with M&A and restructuring activities.

¹ Stephan Hutter and Katja Kaulamo are partners at Skadden, Arps, Slate, Meagher & Flom.

II GOVERNING RULES

The applicable regulatory framework governing IPOs in Germany is mainly based on EU directives and regulations that have largely harmonised the regulatory environment in the area of listing and trading of securities in the European Union. The EU regulatory framework conforms to global standards and is similar to the regulatory environment in the US and Asian markets.

i Main stock exchanges

The FSE is the main stock exchange in Germany, and one of the world's largest trading centres for securities. With a share of more than 90 per cent of all trading in shares at all German stock exchanges, the FSE is by far the most important of Germany's seven stock exchanges.² The other (regional) stock exchanges are located in Berlin, Duesseldorf, Hamburg, Hannover, Munich and Stuttgart.

Deutsche Börse AG operates the FSE, an entity governed by public law. In addition to the specialist trading at the FSE (i.e., floor trading), Deutsche Börse AG operates the fully electronic trading platform Xetra®, which is one of the cash markets with the highest trading volumes in the world.³ Of the more than 200 market participants at the FSE, roughly half are from countries other than Germany.⁴ The importance of the FSE among the world's largest trading centres is underlined by the proposed merger of its operating company Deutsche Börse AG with the NYSE in 2011 (vetoed by the European Commission), and the currently proposed merger with the London Stock Exchange (LSE) (pending approval from the European Commission since August 2016, also subject to additional political scrutiny following Brexit).

The FSE operates two markets: the EU regulated market (with the sub-segments Prime Standard and General Standard) and the exchange-regulated market (with the sub-segments Scale and Quotation Board), each offering different transparency levels and listing requirements.

The Prime Standard sub-segment of the regulated market offers the highest level of transparency in Germany and is aimed at large companies seeking international recognition and investors. The Prime Standard sub-segment imposes additional post-admission obligations and higher transparency requirements on the issuer, which go beyond the transparency requirements under mandatory EU or German law and fulfil the information needs of international investors (e.g., the quarterly reporting obligation). Thus, the Prime Standard sub-segment of the Frankfurt Stock Exchange's regulated market is specifically designed for companies that are capable of complying with these more stringent post-admission reporting obligations and that wish to address international investors. Furthermore, the acceptance into the selection indices DAX, MDAX, TecDAX and SDAX is limited to issuers admitted to trading in the Prime Standard sub-segment.

The General Standard sub-segment of the regulated market operates on the basis of mandatory (minimum) EU or German statutory regulation and is aimed at mid-sized or large companies seeking a cost efficient listing with lesser ongoing reporting obligations

2 <http://deutsche-boerse.com/dbg-en/about-us/frankfurt-stock-exchange>.

3 See footnote 2, *supra*.

4 See footnote 2, *supra*.

within the EU-regulated market. The General Standard is particularly suitable for companies that address national investors only and wish to opt for a cost-efficient listing on a regulated market.

In addition to the aforementioned regulated market segments, the FSE also operates an exchange-regulated market, which is called the Regulated Unofficial Market or Open Market. On the exchange-regulated market, securities may be included to trading either in the Quotation Board or in the Scale segment. The Open Market generally provides for lower listing requirements and ongoing reporting obligations as compared with the regulated market. Within the Open Market, the Scale segment is the trading segment with the higher transparency rules while the Quotation Board is a trading segment for small companies and provides for the lowest transparency standards and entails the least costs. The Scale segment is specifically designed to enhance access to capital for smaller and medium-sized enterprises (SMEs). Scale was launched on 1 March 2017, replacing the former Entry Standard segment of the exchange-regulated market, which had been established after the closing of the New Market segment in 2003. Inclusion of shares to trading on Scale is dependent on the issuer fulfilling certain additional listing requirements as compared with the Quotation Board. Also, the Scale segment imposes certain additional reporting obligations on the issuer.

The Prime Standard sub-segment of the regulated market at the FSE is comparable with the Premium segment of the Main Market at the LSE. The Open Market of the FSE is comparable with the Alternative Investment Market (AIM) of the LSE.

The vast majority of issuers listed on the regulated market (Prime Standard and General Standard) of the FSE are German companies, with foreign issuers accounting for less than 10 per cent of the companies listed on the Prime Standard sub-segment.⁵ In contrast, there is a very large number of foreign issuers whose shares are included into trading on the Quotation Board segment of the Open Market at the FSE, including a great number of US blue-chips. This results from the fact that any broker admitted as a participant on the Open Market can generally apply for inclusion of shares to trading on the Quotation Board segment of the Open Market without any involvement of the issuer. Hence, the shares of many foreign companies are traded on the Quotation Board of the Open Market without the issuer's involvement or knowledge thereof.

Given the large size and liquidity of the FSE, German issuers rarely pursue a dual-listing on another stock exchange in addition to the listing on the FSE.

ii Overview of listing requirements

The requirements for a listing on any of the German stock exchanges vary largely depending on the market segment on which the securities are to be listed. Generally, securities can be listed either on the regulated market segment or on the unregulated (i.e., only exchange-regulated) market segment. On the regulated market segment, European Union securities legislation (as implemented into German law) applies, and issuers listed on those markets have to comply

⁵ As of February 2017, 91 per cent of the companies listed on the Prime Standard are German and another 7 per cent are from other European countries (2 per cent of which are from Austria or Switzerland). In the General Standard the portion of non-German issuers is bigger: 83 per cent are from Germany, 8 per cent are from other European countries (2 per cent of which are from Austria or Switzerland) and 9 per cent are from non-European countries; www.deutsche-boerse-cash-market.com/dbcm-de/instrumente-statistiken/statistiken/gelistete-unternehmen.

with high statutory standards that are largely harmonised throughout the European Union while the unregulated market is merely regulated pursuant to the rules and regulations of the respective stock exchange.⁶

The admissions process for a listing of shares on the regulated market in Germany is set in motion with a written admission application, filed by the issuer together with one or more underwriters. The underwriter, as co-applicant, must be a credit institution, financial services institution or a company that performs its business activities pursuant to Section 53, paragraph 1, clause 1 or Section 53b, paragraph 1, clause 1 of the German Banking Act⁷ and must be admitted for trading on a German stock exchange and fulfil certain minimum capital requirements. The admission application must be signed by the issuer and the underwriter as the listing sponsor, and be submitted to the FSE with the relevant supporting documents, including, in particular, a comprehensive set of corporate documents. Deutsche Börse AG has published an application form that contains categories of information generally required, as well as a checklist listing the documents to be submitted to the admissions office of the FSE.

Both the public offering of securities and the admission of securities to trading on an EU-regulated market require the publication of a prospectus (subject to certain exemptions). The mandatory content of a prospectus follows global standards and is set forth in the EU Prospectus Regulation.⁸ Generally, a public offering in Germany as well as a listing of shares on a regulated market of a German stock exchange requires the publication of a prospectus in the German language except when the prospectus is used, in addition to the public offering of securities in Germany, for:

- a* a public offering of securities in another jurisdiction within the European Economic Area (commonly referred to as ‘passporting’); or
- b* the listing of the securities on another regulated market within the European Economic Area.

In either case, the German Federal Financial Supervisory Authority (BaFin)⁹ permits both the summary and the prospectus body to be in the English language (provided that a German language translation of the summary is also included). While dual listings are rare, it is

6 The following description focuses on the requirements for a listing on the regulated market and does not provide a detailed description of the (lesser) listing requirements on the exchange-regulated market segments. For a listing on the Quotation Board sub-segment of the FSE Open Market, a respective application by an admitted broker is the only major listing requirement provided that the shares are traded on another domestic or foreign exchange-like market recognised by Deutsche Börse AG. An issuer applying for a listing on Scale must file a listing application by a supporting capital market partner (i.e., a bank or broker recognised by Deutsche Börse AG) and must, *inter alia*, have been in existence for at least two years and must generally have a free float of at least 20 per cent or 1 million free float shares. A prospectus is not required (unless there is a concurrent public offer of the shares); instead the issuer must prepare an inclusion document containing certain information on the issuer’s financial position, future prospects and the rights attaching to its securities. Overall the listing requirements for the exchange-regulated market segments (including the Scale segment) are by far not as complex and comprehensive as for the EU-regulated market segments.

7 The German Banking Act of 9 September 1998, BGBl. I p. 2776 (as amended).

8 Commission Regulation (EC) No. 809/2004 of 29 April 2004.

9 BaFin is an independent federal regulator headquartered in Bonn and Frankfurt and supervised by the German Federal Ministry of Finance.

common practice for German issuers to conduct a public offering in another EU Member State in addition to Germany (primarily in Luxemburg) in order to be able to issue an English language prospectus only.

In addition to the requirement to publish a prospectus, there are certain further requirements that must be fulfilled in order to qualify the issuer for a listing on a regulated market at the FSE. In general, the issuer must have an operating history of at least three years (subject to exemptions) and the issuer must have disclosed its annual financial statements for the past three fiscal years. Moreover, the issuer's estimated market value may not be less than €1.25 million, the issuing volume must be at least 10,000 shares and the issuer's shares must be spread sufficiently resulting in a free float of at least 25 per cent. However, a free float of less than 25 per cent of the shares may also be sufficient if orderly exchange trading is ensured due to both a broad diversification (generally at least 100 investors) and a significant number of issued and listed shares. In the event that an issuer seeks admission to the Prime Standard sub-segment, it will also need to appoint at least one designated sponsor for the shares.

iii Overview of law and regulations

The Prime Standard and General Standard sub-segments of the FSE are EU-regulated markets. Both the listing requirements and the post-IPO obligations for these regulated markets are set out in statutory law, deriving from EU law. In Germany, the applicable regulations are primarily set out in the German Stock Exchange Act,¹⁰ the German Stock Exchange Listing Regulation,¹¹ the German Securities Prospectus Act¹² (implementing the EU Prospectus Directive)¹³ and the German Securities Trading Act¹⁴ (implementing the disclosure requirements of the EU Transparency Directive).¹⁵ In addition, the Rules and Regulations of the FSE provide for certain additional obligations for issuers listing their shares in the Prime Standard sub-segment.

In addition to the aforementioned German statutes implementing EU directives, there are several EU regulations that contain core legislation directly applicable in Member States of the EU and are relevant for an IPO on a regulated market anywhere in the EU. The most important EU Regulations in this context are the EU Prospectus Regulation, which governs the contents of prospectuses throughout the EU, and the Market Abuse Regulation¹⁶ (MAR), which governs certain areas of the post-IPO obligations (including, in particular, publication of inside information and managers' transactions).

The EU Prospectus Regulation is currently under review by the European Commission. The review is aimed at facilitating easier access to the capital markets, particularly for SMEs. The most recent draft of a new EU Prospectus Regulation provides more options, especially

10 Stock Exchange Act of 16 July 2007, BGBl. I p. 1330 (as amended).

11 Stock Exchange Admission Regulation of 9 September 1998, BGBl. I p.2832 (as amended).

12 Securities Prospectus Act of 22 June 2005, BGBl. I p. 1698 (as amended).

13 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003.

14 Act on Securities Trading of 9 September 1998, BGBl. I p. 2708 (as amended).

15 Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 and the German implementation of the Act Implementing the Transparency Directive Amending Directive of 20 November 2015, BGBl. I p. 2019.

16 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014.

for SMEs, to issue securities without a prospectus at all. In addition, the draft includes lighter disclosure requirements for secondary issuances of companies already listed on an EU-regulated market.

The Market Abuse Regulation, effective since 3 July 2016, aims at enhancing market integrity and investor protection in the EU. It provides for an updated European regime regarding market abuse that applies uniformly throughout the EU and addresses increased globalisation of financial markets and the emergence of a number of new trading platforms.

Under the EU Prospectus Directive, the competent authority for the prospectus approval is the regulator in the home Member State of the issuer. In case of share offerings, the home Member State for this purpose (and hence the competent authority) is always the Member State in which the issuer has its registered seat. Therefore, the competent authority for German issuers is BaFin, while prospectuses of issuers from other EU Member States listing their shares on a German stock exchange are to be approved in their home Member States by the respective national authority. The listing and admission to trading on the FSE is, in either case, dealt with by the admissions office of the FSE. The European Securities and Markets Authority (ESMA) is not directly involved in the German IPO process, but it aims to align the cooperation between the European national regulatory authorities by, *inter alia*, issuing guidelines in relation to interpretation of European securities directives and regulations, which guidelines are generally adopted by the European national authorities.

The Open Market segment of the FSE is not an EU-regulated market but one regulated by the FSE itself. Unlike the regulated market, which is subject to public law, the Open Market is subject to private law. The Deutsche Börse AG General Terms and Conditions for the Regulated Unofficial Market of the Frankfurt Stock Exchange¹⁷ govern the listing of securities on the Open Market, as well the obligations resulting from such listing.

III THE OFFERING PROCESS

Once the decision to go public has been made, various work streams have to be initiated. In light of the documentary requirements, the issuer has to establish a data room in order to facilitate due diligence. The corporate structure of the issuer has to be reviewed and, if required, a change of legal form has to be prepared in order to ensure the issuer's ability to access the capital market.¹⁸ Moreover, on the marketing side, both the underwriting banks and the issuer will develop the issuer's equity story and prepare the marketing strategy. While due diligence and drafting the prospectus are paramount at the beginning of the offering process, the marketing aspects will usually speed up later in the process and a crucial challenge is to keep both work streams dealt with by different players congruent as regards content.

17 www.xetra.com/blob/2309602/610f793de73b98307971cb2033ffdf1/data/General-Terms-Regulated-Unofficial-Market-2017-03-01.pdf.

18 The legal forms entitled to access the capital market by equity issuance are stock corporations, European companies, partnerships limited by shares or real estate investment trusts (REITs) (German REITs must be stock corporations pursuant to mandatory law).

i General overview of the IPO process

Usually, the preparation of an IPO in Germany takes between four and six months and can be divided into the following four phases:

- a* pre-preparation period (about six months prior to completion):
 - initial preparation for IPO, including preparation of the implementation of any changes in the corporate structure of the issuer, if necessary, and compilation of documents for the data room;
- b* preparation period (about 90 days):
 - appointment of advisers, determination of the deal structure, business and financial due diligence, legal due diligence, preparation of financial statements, drafting of prospectus and further legal documents;
- c* regulatory review period (about 40 days):
 - filing of prospectus with BaFin, determining valuation, preparing roadshow presentations, pilot fishing, filing of listing application with the FSE, analyst presentation, publication of pre-deal research; and
- d* execution and settlement (about 10 days):
 - printing of prospectus, correspondence with investors, execution of underwriting agreement, building order book, pricing, execution of pricing agreement, allocation, trading, closing.

The key parties involved in a German IPO generally follow international standards and comprise the following players:

- a* issuer: the company going public;
- b* issuer's counsel: advising the issuer on all legal aspects of the transaction, conducting legal due diligence, assisting the issuer in the preparation of the prospectus, negotiating the underwriting documentation, issuing and monitoring guidelines restricting pre-IPO publicity and issuing legal opinions and disclosure letters to the underwriters;
- c* issuer's auditors: verifying that the financial information in the prospectus corresponds to the audited annual accounts and issuing comfort letters to the underwriters;
- d* selling shareholders (if any): either wants to exit its investment by way of the IPO or intends to raise additional funding for the issuer while maintaining a (significant) share in it;
- e* selling shareholders' counsel: advising the selling shareholders (if any) on the underwriting agreement;
- f* underwriting banks: coordinating and managing the offering in various functions:
 - global coordinators: advising the issuer and coordinating on a global basis if there are offerings on more than one market;
 - bookrunners: maintaining the order book for the shares; and
 - underwriters: underwriting the shares to be offered usually as part of an underwriting syndicate led by the global coordinators; and
- g* underwriters' counsel: advising on all legal aspects of the transaction relevant for the underwriters (e.g., underwriting agreement, research publication), conducting legal due diligence, preparing and negotiating the underwriting agreement, coordinating the admission procedure and issuing legal opinions and disclosure letters to the underwriters.

The standard documentation of German IPOs meets general international market practice. Besides the prospectus, it usually comprises an underwriting agreement, agreement among managers, pricing agreement, lock-up agreement, legal opinions, comfort letters and officers' certificates.

ii Pitfalls and considerations

Over the past couple of years, BaFin's scrutiny in reviewing prospectuses has increased, often leading to more (substantive) comments on draft prospectuses that have to be addressed by the parties involved. Given that the prospectus approval process typically includes three rounds of BaFin comments and a limited time to respond to them in light of the generally tight transaction timelines, this can become a burden on all parties involved in the process, in particular the issuer and its auditors. However, in terms of overall timing considerations, this development is generally addressed in advance by agreeing with BaFin on an individual timetable for the prospectus approval process, allowing for sufficient time between receipt of comments and resubmission of the prospectus. In order to ensure a smooth process, it is crucial that the legal advisers maintain a good working relationship with the BaFin team by discussing relevant and potentially difficult (roadblock) issues – such as the required level of completeness of the prospectus upon its first filing – in advance and addressing queries and questions from the regulator professionally and swiftly.

iii Considerations for foreign issuers

Generally, the same legal requirements apply for foreign issuers as for domestic issuers. In particular, this means that the financial statements of the (foreign) issuer to be attached to the prospectus must conform to the standards of the EU Prospectus Regulation. In other words, the financial statements must generally be in the IAS/IFRS format as adopted by the European Union. If the foreign issuer's financial statements are not prepared under this accounting standard, they can be used only if the applied accounting standard is deemed comparable to IAS/IFRS as adopted by the European Union.¹⁹ According to the Committee of European Securities Regulators (now ESMA), the generally accepted accounting principles of the United States, Canada and Japan are sufficiently comparable and may usually be used.²⁰

Foreign issuers seeking to list their shares in Germany should also consider well in advance whether the shares in question qualify as securities within the meaning of the German Stock Exchange Act, and are eligible for safekeeping at Clearstream as the common depository and for admission to trading on a regulated market in Germany. In this context, it is relevant to ascertain that the shares are represented by a share certificate that contains the elements of a security within the meaning of German law, in particular directly conferring shareholders' rights to the respective holders of co-ownership interests in the share certificate. Because of the different legal frameworks regarding the function and legal quality of share certificates, it has proven difficult to list shares from certain jurisdictions in Germany.

19 U Kunold in Assmann/Schlitt/von Kopp-Colomb, *WpPG/VermAnlG*, 3rd Edition, 2017, EU-ProspektVO, Anh. I, Rz. 171. The financial statements must comprise a balance sheet, an income statement, a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners, a cash flow statement and the accounting policies and explanatory notes. Further requirements are set out in Article 35 of the EU Prospectus Regulation.

20 <http://www.cmvn.pt/pt/Cooperacao/esma/DocumentosESMACESR/Documents/05230b.pdf>.

IV POST-IPO REQUIREMENTS

Companies listed on EU-regulated markets are subject to a comprehensive set of post-admission obligations predominantly aiming at investor protection. The European approach to ensure investor protection in a capital market context is driven by transparency principles and protections against markets abuse (in particular, anti-fraud and insider trading). In this context, issuers must comply with ongoing reporting obligations which have been introduced on a European level by the EU Transparency Directive and the Market Abuse Regulation.

As discussed in Section II.i, *supra*, issuers may choose between the Prime Standard and the General Standard sub-segments within the FSE regulated markets.²¹ Issuers aiming to reach out to international investors usually opt for the Prime Standard, which provides for stricter disclosure obligations than the General Standard as the FSE Exchange Rules²² impose additional disclosure obligations beyond the transparency obligations under mandatory EU law. The respective post-admission obligations on the regulated market segments can be summarised as follows:

Post-admission obligation	Prime Standard	General Standard
Financial reporting	Annual financial report within four months after the end of a given financial year	
	Half-yearly financial report within three months of the end of the reporting period	
	Quarterly statement within two months of the end of the reporting period	None
	Financial reporting must be in English and in German (however, English is sufficient for issuers located abroad)	Financial reporting must be in English or in German
Disclosure of material events with an influence on the share price (<i>ad hoc</i> disclosure)	Mandatory	
Disclosure of managers' transactions	Mandatory	
Notification of voting rights by shareholders and publication thereof by the issuer	Mandatory (3, 5, 10, 15, 20, 25, 30, 50 and 75 per cent of voting rights)*	
Analyst meeting	At least once a year, there has to be an analysts' meeting (aside from the annual press conference) in order to announce the figures from the annual accounts	None
Financial calendar	Continuous updating, publication and transmission of a financial calendar with the most important corporate action events of the issuer	None
Exchange Reporting System	All reports and documents shall be transmitted to Deutsche Börse AG via its reporting system (Exchange Reporting System)	None

*Additional notification obligations apply to financial instruments.

- 21 While there are no ongoing reporting obligations for issuers listed on the Quotation Board of the Open Market, companies listed on the Scale of the Open Market must, *inter alia*, publish annual and half-yearly financial reports and interim management reports, conduct an information event for analysts and investors at least once a year and provide information as to changes with regard to the issuer or the traded securities (such obligations being less complex and comprehensive as the disclosure regime pursuant to the EU Transparency Directive and the MAR).
- 22 Exchange Rules of the Frankfurt Stock Exchange, www.xetra.com/blob/1187648/6f3c49538d09e741562cb6a229cff3c7/data/2016-03-18-Exchange-Rules-for-the-Frankfurter-Wertpapierboerse.pdf.

In light of market integrity and harmonised investor protection in the EU, the MAR established, among other things, a generally applicable definition²³ of ‘inside information’ and a legal framework for publication of inside information (*ad hoc* disclosure) as well as rules for insider dealings and managers’ transactions (directors’ dealings) that now apply uniformly throughout the EU. In terms of *ad hoc* disclosure requirements, inside information must generally be disclosed without delay, subject to a permitted delay of disclosure if certain requirements are met (in particular the issuer’s interest in delaying disclosure must outweigh the market’s interest in immediate disclosure and confidentiality must be ensured). If an issuer decides to delay disclosure of inside information, it is required to have certain statutorily defined decision-making and record-keeping procedures in place in order to monitor the continued availability of the exemption from the requirement to publish the inside information without delay. Upon the (later) publication of the inside information, the issuer must notify the respective regulator (in Germany, BaFin) about the reasons for the delay of disclosure of inside information and explain in detail how it complied with the record-keeping obligations under MAR.

Besides these European regulatory requirements, some further obligations arise for companies upon listing pursuant to German law. Pursuant to provisions of the German Stock Corporation Act, the board of management and the supervisory board of listed companies have to state annually whether the company complies with the provisions of the German Corporate Governance Code²⁴ and to explain the reasons in case it does not comply with the Code (‘comply or explain’). In addition, at least 30 per cent of the members of the supervisory board of listed companies that are subject to the statute of labour codetermination must be female (and at least 30 per cent male) and this board composition requirement must generally be complied with by the supervisory board as a whole. If decided by a majority vote by the members of the supervisory board, the aforementioned gender diversity requirement must be fulfilled by each of the employee representatives’ side and the stockholder representatives’ side of the supervisory board.

V OUTLOOK AND CONCLUSION

The legal framework for IPOs in Germany is comparable to the set of capital markets rules and regulations in other jurisdictions. As a result of established international capital markets standards, documents and markets practice, the legal and documentary path towards an IPO is very similar throughout Europe (this is also because of a large number of harmonising EU regulations), with corresponding requirements in the United States and in Asia.

There is ongoing activity in Europe to further develop and harmonise capital markets standards across all Member States, and to align European standards with other developments internationally. In this regard, the Capital Markets Union (CMU) is currently one of the flagship initiatives of the European Commission. Its central aim is to enhance economic growth in the EU by increasing the role capital markets play in the financing of the economy

23 ‘Inside information’ is defined as ‘information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments’.

24 Deutscher Corporate Governance Kodex as of 5 May 2015, http://www.dcgk.de/files/dcgk/usercontent/de/download/kodex/2015-05-05_Deutscher_Corporate_Governance_Kodex.pdf.

and to help to integrate financial markets activity across Member States. It reflects a shift in political priorities from crisis management towards more meaningful growth of the European economy and a related reduction of unemployment levels based on stable and more liquid capital markets. The CMU is a framework programme that is also a response to decreasing bank financing activity resulting from higher capital and liquidity requirements for financial institutions, and is designed to ultimately open alternative non-bank funding channels in support of efficient capital allocation throughout the EU, leading to a broader and more efficient financial system. It remains to be seen what the impact of the CMU initiative will be in the mid to long term.

Although the number of IPOs has somewhat increased since the beginning of the European financial crisis in 2007, equity capital markets activity in Germany remains characterised by investors favouring large liquid and already publicly traded stocks over small to medium-sized IPOs and private equity firms exiting from their investments in dual-track processes, which often results in a trade sale. As spin-offs and carve-outs from large German corporates have, in recent months and years, dominated the German IPO market (e.g., Lanxess, Osram, Uniper, Innogy), it is likely that such trend will continue in the future. Overall, market volatility and attempts to de-risk IPO transactions through pre-IPO placements and reducing the time to market have become the 'new normal' in German capital markets – in particular IPO – activity.

Global, Chambers Asia and *IFLR1000*. He also was named one of *Law360's* 2015 'rising stars' under 40 for capital markets. Mr Betts speaks fluent Mandarin and is a professionally accredited translator of Chinese. Mr Betts' work has been repeatedly recognised for its innovation, including by the *Financial Times* in its 'Asia Pacific Innovative Lawyer' reports.

DAVID J GOLDSCHMIDT

Skadden, Arps, Slate, Meagher & Flom LLP

David J Goldschmidt represents US and international issuers and investment banks in a variety of financing matters, including public offerings and private placements of debt and equity securities, and international securities offerings. He also counsels US and international clients on an ongoing basis, including advising on corporate governance, SEC filings and disclosure issues. He has extensive experience advising issuers and underwriters on offerings by high-technology and communications companies. Mr Goldschmidt is also very active in representing and advising real estate investment trusts in connection with capital market transactions, including many initial public offerings and general corporate matters, as well as representing issuers and investment banks in connection with private and public securities offerings by Israeli companies. He is also involved in developing new financial products. Mr Goldschmidt serves on Skadden's policy committee. He was named *Who's Who Legal 2016* Capital Markets Lawyer of the Year, and has repeatedly been selected for inclusion in *Chambers USA, Chambers Global, The Legal 500 US, The Best Lawyers in America, IFLR1000, Who's Who Legal* and *Euromoney*.

ALEXEY KIYASHKO

Skadden, Arps, Slate, Meagher & Flom

Alexey Kiyashko has practised law in Skadden's Moscow, New York and Paris offices. Co-head of Skadden's Moscow office, Mr Kiyashko rejoined the Moscow office in February 2002 after working as counsel at the European Bank for Reconstruction and Development in London. He focuses on international M&A and corporate finance transactions, and has been repeatedly ranked as a leading individual in *Chambers Global, Chambers Europe* and *The Legal 500 EMEA*. Mr Kiyashko was a member of the Moscow Exchange's Committee on Primary Equity Markets, a committee advising the Moscow Exchange and the Russian securities market regulator on how to improve the legislative and regulatory framework for the equity capital markets in Russia.

ALEXANDER KOVRIGA

Skadden, Arps, Slate, Meagher & Flom

Alexander Kovriga is a member of Skadden's corporate practice and has experience in a variety of corporate finance, M&A and joint venture transactions in Russia. Mr Kovriga's recent corporate finance experience includes advising Russia-based companies on a wide range of transactions, including IPOs and secondary offerings, public and private placements, as well as offerings of American Depositary Shares and Global Depositary Receipts. Mr Kovriga previously practised in Skadden's New York office, where he focused on mergers and acquisitions and private equity matters. He is a native Russian speaker and is fluent in English and German.

DANNY TRICOT

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Danny Tricot leads Skadden's European corporate finance practice and is based in the London office. His capital markets work includes acting for issuers and underwriters on a broad range of equity and debt transactions. Mr Tricot has advised on initial public offerings, rights offerings and private placings. He has been involved in equity listings in London and on various international exchanges. Most of the offerings that he has worked on have included a Rule 144A component. He has worked across several European jurisdictions, and also in growth markets, with extensive experience in the Middle East, Africa and Russia.

Chambers UK has described Mr Tricot as 'an incredibly hard-working lawyer' who displays 'a balance of commerciality and technical brilliance'. He also is listed in *Chambers Europe*, *Chambers Global*, *The Legal 500* and *IFLR1000*. He was named as one of only three lawyers in *Financial News*' Top 100 Rising Stars 2007, and in 2016 he was featured in *Financial News*' Hall of Fame. Mr Tricot's work has been repeatedly recognised for its quality and innovation in various international awards, including several commendations in the *Financial Times*' 'Innovative Lawyers' reports.

ADAM M HOWARD

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Adam M Howard focuses on international corporate finance and public M&A transactions. He has advised both issuers and underwriters in connection with offerings of equity and debt securities and listings in London and on various international exchanges. In 2016, Mr Howard was named by *Financial News* as one of their 40 Under 40 Rising Stars in Legal Services. In 2015, Mr Howard received The M&A Advisor's European Emerging Leaders Award, which recognises industry professionals who have reached a significant level of success and made notable contributions to their industry and community.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

4 Times Square
New York
New York 10036
United States
Tel: +1 212 735 3000
Fax: +1 212 735 2000/1
david.goldschmidt@skadden.com

An der Welle 3
60322 Frankfurt am Main
Germany
Tel: +49 69 74220 0
Fax: +49 69 74220 300
stephan.hutter@skadden.com
katja.kaulamo@skadden.com

42/F, Edinburgh Tower
The Landmark
15 Queen's Road Central, Hong Kong
Hong Kong
Tel: +852 3740 4700
Fax: +852 3740 4727
christopher.betts@skadden.com

Ducat Place III
Gasheka Street 6
Moscow 125047
Russian Federation
Tel: +7 495 797 4600
Fax: +7 495 797 4601
alexey.kiyashko@skadden.com
alexander.kovriga@skadden.com

Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street
Canary Wharf
London E14 5DS
United Kingdom
Tel: +44 20 7519 7000
Fax: +44 20 7519 7070
danny.tricot@skadden.com
adam.howard@skadden.com

www.skadden.com