

THE INITIAL PUBLIC  
OFFERINGS  
LAW REVIEW

SECOND EDITION

Editor  
David J Goldschmidt

THE LAWREVIEWS

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OFFERINGS  
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# PREFACE

Welcome to the second edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related IPO regulatory environments, and provides insight into the legal and procedural IPO landscapes in 21 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe and many are now publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. 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.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2017 marked a resurgence for many IPO markets. The number of 2017 IPOs and total proceeds raised were led by the Asia-Pacific exchanges, with many other regions also experiencing improvement over recent years. Despite the increase in available private capital, which has enabled issuers to remain private for longer periods of time, there is continued optimism for 2018 in terms of both global deal count and proceeds. The strong global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

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 from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This second edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions and serves as a guide for issuers and their directors and management.

**David J Goldschmidt**

Skadden, Arps, Slate, Meagher & Flom LLP

New York

March 2018

# GERMANY

*Stephan Hutter and Katja Kaulamo*<sup>1</sup>

## 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 2008 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’ (the 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 transaction 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 of 2008, 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 levels similar to the last couple of years, 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.

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<sup>1</sup> Stephan Hutter and Katja Kaulamo are partners at Skadden, Arps, Slate, Meagher & Flom LLP.

During the past few years, the general development of equity markets in Germany showed significant growth – in line with the development of equity markets in several other Member States of the European Union – on the back of the continuing policy by the European Central Bank to keep interest rates at historically low levels.

## 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.<sup>2</sup> The other (regional) stock exchanges are located in Berlin, Düsseldorf, 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<sup>®</sup>, which is one of the cash markets with the highest trading volumes in the world.<sup>3</sup> Of the more than 200 market participants at the FSE, roughly half are from countries other than Germany.<sup>4</sup> 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 and with the London Stock Exchange (LSE) in 2017 (both vetoed by the European Commission).

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. Further, the acceptance into the selection indices DAX, MDAX, TecDAX and SDAX is limited to issuers admitted to trading in the Prime Standard sub-segment.

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2 [www.deutsche-boerse.com/dbg-en/about-us/frankfurt-stock-exchange](http://www.deutsche-boerse.com/dbg-en/about-us/frankfurt-stock-exchange).

3 See footnote 2.

4 See footnote 2.

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 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.<sup>5</sup> 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.<sup>6</sup> 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.

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5 As of February 2018, Scale comprised 48 companies including four newly listed companies, i.e., there were four IPOs on the new Scale segment in 2017 while the remaining number consist of companies that were already listed on the former Entry Standard and met the Scale requirements: [www.deutsche-boerse-cash-market.com/dbcm-de/instrumente-statistiken/statistiken/gelistete-unternehmen](http://www.deutsche-boerse-cash-market.com/dbcm-de/instrumente-statistiken/statistiken/gelistete-unternehmen).

6 As of February 2018, 90 per cent of the companies listed on the Prime Standard are German and another 8 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 and 9 per cent are from non-European countries: [www.deutsche-boerse-cash-market.com/dbcm-de/instrumente-statistiken/statistiken/gelistete-unternehmen](http://www.deutsche-boerse-cash-market.com/dbcm-de/instrumente-statistiken/statistiken/gelistete-unternehmen).

## 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, EU securities legislation (as implemented into German law) applies, and issuers listed on those markets have to comply 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.<sup>7</sup>

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 Act<sup>8</sup> 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.<sup>9</sup> 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 (EEA) (commonly referred to as ‘passporting’); or
- b the listing of the securities on another regulated market within the EEA.

<sup>7</sup> 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.

<sup>8</sup> The German Banking Act of 9 September 1998, BGBl. I p. 2776 (as amended).

<sup>9</sup> Commission Regulation (EC) No. 809/2004 of 29 April 2004.

In either case, the German Federal Financial Supervisory Authority (BaFin)<sup>10</sup> 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 common practice for German issuers to conduct a public offering in another EU Member State in addition to Germany (primarily in Luxembourg) 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,<sup>11</sup> the German Stock Exchange Listing Regulation,<sup>12</sup> the German Securities Prospectus Act<sup>13</sup> (implementing the EU Prospectus Directive)<sup>14</sup> and the German Securities Trading Act<sup>15</sup> (implementing the disclosure requirements of the EU Transparency Directive).<sup>16</sup> 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

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

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

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

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

14 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003. The EU Prospectus Directive is successively being replaced by the new EU Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017) in three stages (July 2017, 2018 and 2019). The new EU Prospectus Regulation will have substituted the EU Prospectus Directive upon 21 July 2019 completely.

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

16 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.

the contents of prospectuses throughout the EU, and the Market Abuse Regulation<sup>17</sup> (MAR), which governs certain areas of the post-IPO obligations (including, in particular, publication of inside information and managers' transactions). Further, the new EU Prospectus Regulation replacing the EU Prospectus Directive in three stages (July 2017, 2018 and 2019) is aimed at facilitating easier access to the capital markets, particularly for SMEs. It provides more options, especially for SMEs, to issue securities without a prospectus at all. In addition, the new EU Prospectus Regulation also 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 the 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, whose 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 Exchange<sup>18</sup> 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.<sup>19</sup> 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

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

18 [www.xetra.com/blob/2309602/a0a2ed3ae82d4b43d405538a869e6cc4/data/General-Terms-Regulated-Unofficial-Market-2018-01-03.pdf](http://www.xetra.com/blob/2309602/a0a2ed3ae82d4b43d405538a869e6cc4/data/General-Terms-Regulated-Unofficial-Market-2018-01-03.pdf).

19 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).

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.

### **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 exiting its investment by way of the IPO or intending 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.<sup>20</sup> Pursuant to the EU Prospectus Regulation, the generally accepted accounting principles of the United States, Canada, Japan, China and Korea may generally be used.

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.

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20 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.

#### 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, above, issuers may choose between the Prime Standard and the General Standard sub-segments within the FSE regulated markets.<sup>21</sup> 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 Rules<sup>22</sup> 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
<b>Financial reporting</b>	Annual financial report within four months of 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
<b>Disclosure of material events with an influence on the share price (<i>ad hoc</i> disclosure)</b>	Mandatory	
<b>Disclosure of managers' transactions</b>	Mandatory	
<b>Notification of voting rights by shareholders and publication thereof by the issuer</b>	Mandatory (3, 5, 10, 15, 20, 25, 30, 50 and 75 per cent of voting rights)*	
<b>Analyst meeting</b>	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
<b>Financial calendar</b>	Continuous updating, publication and transmission of a financial calendar with the most important corporate action events of the issuer	None
<b>Exchange Reporting System</b>	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/1668712/85853795037487d417e0407cef2f371c/data/2018-01-31-Exchange-Rules-for-the-Frankfurter-Wertpapierboerse.pdf](http://www.xetra.com/blob/1668712/85853795037487d417e0407cef2f371c/data/2018-01-31-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 definition<sup>23</sup> 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 Code<sup>24</sup> 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

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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 German Corporate Governance Code as of 7 February 2017, [www.dcgk.de//files/dcgk/usercontent/en/download/code/170214\\_Code.pdf](http://www.dcgk.de//files/dcgk/usercontent/en/download/code/170214_Code.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. In 2017, the European Commission launched its mid-term review of the CMU and its establishment has been driven further by, *inter alia*, measures to harmonise personal pension products within the EU, amendments to the European venture capital funds and the European social entrepreneurship funds regulations, as well as the announcement of new tax guidance by the European Commission to facilitate transactions by cross-border investors.<sup>25</sup> 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 2008, 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 (e.g., the contemplated spin-offs of the healthcare business of Siemens and the asset-management business of Deutsche Bank). Overall, market volatility and attempts to de-risk IPO transactions through pre-IPO placements, cornerstone investments and reducing the time to market have become the 'new normal' in German capital markets, and in particular, IPO activity.

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25 The progress on the CMU action plan is available at: [www.ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan\\_en](http://www.ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en).

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### **ADAM M HOWARD**

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

Adam M Howard focuses on international capital markets 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.

### **STEPHAN HUTTER**

*Skadden, Arps, Slate, Meagher & Flom*

Dr Stephan Hutter is a partner in Skadden's Frankfurt office, where he focuses on international capital markets transactions, cross-border corporate transactions and bank financings. He has a broad range of experience in initial public offerings, capital increases and high-yield debt financings involving international securities offerings of German, Austrian and Swiss companies, including dual listings and private placements of shares, and debt securities in the United States. For more than a decade, Dr Hutter has been named by industry surveys as a market-leading German and European capital markets practitioner for equity and debt transactions, and has spoken and published on international securities laws transactions and issues.

### **KATJA KAULAMO**

*Skadden, Arps, Slate, Meagher & Flom*

Dr Katja Kaulamo is a partner in the corporate group in Skadden's Frankfurt office, where she advises on a wide range of international corporate and capital markets transactions. Dr Kaulamo has extensive experience in capital markets transactions representing issuers, underwriters and selling shareholders in connection with initial public offerings, capital increases, rights offerings, block trades and offerings of convertible and hybrid capital instruments, as well as investment grade and high-yield debt. Her practice also includes capital markets-related regulatory advice, corporate governance and other corporate matters. Dr Kaulamo is cited as a leading capital markets lawyer in *Chambers Global*, *Chambers Europe*, *The Legal 500*, *IFLR1000* and *JUVE* (Germany).

### **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.

### **ANTHONY PANG**

*Skadden, Arps, Slate, Meagher & Flom*

Anthony Pang is an Asia Pacific counsel in the Hong Kong office of Skadden, Arps, Slate, Meagher & Flom. Mr Pang advises clients on a wide range of corporate matters, including corporate finance transactions, initial public offerings, mergers and acquisition, private equity investments, compliance and Hong Kong regulatory matters. Mr Pang is qualified in Hong Kong, State of New York and England and Wales. He speaks fluent English, Cantonese and Mandarin.

### **DANNY TRICOT**

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

Danny Tricot heads Skadden's European capital markets practice and is based in the London office. His 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.

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

Taunustor 1  
60310 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  
antony.dapiran@skadden.com  
anthony.pang@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

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  
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

[www.skadden.com](http://www.skadden.com)

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