

## **AUSTRIAN STOCK EXCHANGE ACT**

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### **Table of Contents**

#### **Main Part 1 Market Infrastructure**

##### **Section 1 Definitions**

- § 1 Definitions
- § 2

##### **Section 2 Regulated Market**

###### **Subsection 1 General**

- § 3 Issuance of Licenses
- § 4
- § 5 Withdrawal of a License
- § 6 Expiry of a License
- § 7 Trading Surveillance
- § 8 Coordination of Trading Surveillance and Exchange Supervision
- § 9 Trading Rules
- § 10 Capacity of the Systems and Contingency Measures
- § 11 Algorithmic Trading
- § 12
- § 13 Direct Electronic Access
- § 14 Tick Sizes
- § 15
- § 16 Synchronization of Clocks used in Trade Operations
- § 17 Trading Halts and Exclusion of Financial Instruments from Trading on Regulated Markets
- § 18 Position Limits and Position Management Controls for Commodity Derivatives
- § 19
- § 20 Position Reports Broken Down by Position Owner Category

###### **Subsection 2 Organizational Requirements**

- § 21 Organizational Requirements for the Management and Operation of Regulated Markets
- § 22 Outsourcing of Tasks
- § 23 General Terms and Conditions of Business
- § 24 Fees
- § 25 Requirements for the Managing Body of a Market Operator
- § 26 Nominations Committee
- § 27 Presentation of the Annual Financial Statements
- § 28 Exchange Members
- § 29
- § 30
- § 31
- § 32
- § 33
- § 34
- § 35 Exchange Traders
- § 36

**Subsection 3**  
**Admission and Trading on the Securities Exchange**

§ 37	Special Provisions for the Vienna Stock Exchange
§ 38	Admission Procedure and Rescission Procedure for the Official Market
§ 39	General Admission Requirements for the Regulated Market
§ 40	Admission Requirements for the Official Market
§ 41	
§ 42	Application for Admission to Listing
§ 43	Application for the Rescission of Admission
§ 44	Derivative Contracts
§ 45	Obligation of the Issuer to Provide Information
§ 46	Prospectus for the Admission to Listing on the Exchange
§ 47	Repealed by FLG I No 62 of 22 July 2019
§ 48	Equity Investments
§ 49	Realization of Collateral and Deposits
§ 50	Exchange Transactions
§ 51	Objection of Gambling and Wager
§ 52	Trading Procedure
§ 53	Price Determination
§ 54	
§ 55	
§ 56	
§ 57	Foreign Issuers

**Subsection 4**  
**Commodity Exchange und Official Brokers (*Sensale*)**

§ 58	Authorizations
§ 59	Trading on the Exchange
§ 60	Commodity Exchange – Price Determination
§ 61	Official Brokers ( <i>Sensale</i> )
§ 62	
§ 63	
§ 64	
§ 65	
§ 66	
§ 67	
§ 68	
§ 69	
§ 70	
§ 71	
§ 72	
§ 73	Anonymous Transactions
§ 74	

**Section 3**  
**Multilateral Trading Systems (MTF, OTF)**

**Subsection 1**  
**Admission**

§ 75	
§ 76	Synchronization of Clocks Used in Trading Operations
§ 77	Special Requirements for MTFs
§ 78	Special Requirements for OTFs
§ 79	Special Requirements for the Matching of Agent Orders in OTF

**Subsection 2**  
**Monitoring (MTF, OTF)**

§ 80	Monitoring Compliance with the Rules of the MTF and OTF and Other Legal Obligations
§ 81	Trading Halts and Exclusion of Financial Instruments from Trading on an MTF or an OTF

**Subsection 3**  
**Special Features of MTF**

§ 82	SME Growth Market
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**Section 4**  
**Systematic Internalizers**

§ 83 Reporting Obligation of Systematic Internalizers

**Section 5**  
**Data Reporting Service Providers**

**Subsection 1**  
**Authorization Procedure for Data Reporting Service Providers**

§ 84 Mandatory Application for Authorization  
§ 85 Scope of Authorization  
§ 86 Procedure for Granting and Refusing Requests for Authorization  
§ 87 Withdrawal of Authorization  
§ 88 Requirements for the Managing Body of the Data Reporting Service Provider

**Subsection 2**  
**Organizational Requirements**

§ 89 Conditions for Approved Publication Arrangements (APA)  
§ 90 Conditions for Consolidated Tape Providers (CTPs)  
§ 91 Conditions for an Approved Reporting Mechanism (ARMs)

**Section 6**  
**Supervisory Powers**

**Subsection 1**  
**Supervision**

§ 92  
§ 93 Supervisory Powers of the FMA  
§ 94 Costs  
§ 95 Reporting Infringements  
§ 96 Reporting to ESMA  
§ 97 Data Protection  
§ 98 Exchange Commissioners  
§ 99 Protection of Designations  
§ 100 Fines

**Subsection 2**  
**International Cooperation**

§ 101  
§ 102  
§ 103 European Cooperation

**Section 7**  
**Sanctions**

§ 104 Exercising Sanctioning Powers  
§ 105 Further Penal Provisions  
§ 106  
§ 107  
§ 108 Penal Provisions Regarding Legal Entities  
§ 109  
§ 110 Publication of Measures and Sanctions  
§ 111 Legal Protection Against Publication by the FMA

**Section 8**  
**Procedural Provisions**

§ 112 General Procedural Provisions  
§ 113 Special Procedural Provisions  
§ 114  
§ 115  
§ 116

**Section 9  
Transitional Provisions**

§ 117

**Main Part 2  
Transparency Rules and Other Obligations of Issuers**

**Section 1  
General Provisions**

§ 118 Definitions  
§ 119 General Obligations of Issuers  
§ 120 Obligations of Issuers of Shares  
§ 121 Obligations of Issuers of Debt Securities  
§ 122 Language and Third Country Rules  
§ 123 Storage System and Powers of Authorities

**Section 2  
Reporting and Disclosure Obligations**

**Subsection 1  
Regular Disclosures**

§ 124 Annual Financial Report  
§ 125 Interim Reports  
§ 126  
§ 127 Content of Special Reports  
§ 128 Reports on Payments to Government Bodies:  
§ 129 Exemptions from Reporting Obligations

**Subsection 2  
Disclosures on Investments**

§ 130 Changes to Major Investments  
§ 131 Financial Instruments  
§ 132 Adding up Voting Rights  
§ 133 Determination of the Voting Shares  
§ 134 Rules of Procedure  
§ 135 Additional Information  
§ 136 Equivalence of Information  
§ 137 Suspension of Voting Rights

**Subsection 3  
Other Disclosure Obligations**

§ 138  
§ 139

**Section 3  
Supervisory Powers**

§ 140 Powers of Authorities

**Section 4  
Sanctions**

§ 141 Penal Provisions  
§ 142  
§ 143  
§ 144  
§ 145  
§ 146 European Cooperation

**Section 5  
Procedural Provisions**

§ 147  
§ 148  
§ 149

**Section 6  
Transitional Provisions**

§ 150

**Main Part 3  
Market Abuse**

**Section 1  
General Provisions**

§ 151 Definitions

**Section 2**

**Supervisory Powers**

§ 152 Competent Authority  
§ 153 Powers of the Competent Authority

**Section 3  
Administrative Measures to Combat Market Abuse**

§ 154 Administrative Offenses relating to the Abuse of Inside Information and Market Manipulation  
§ 155 Other Administrative Offenses  
§ 156 Criminal Liability of Legal Entities  
§ 157 Other Administrative Measures  
§ 158 Exercise of Supervisory Powers and Sanctioning  
§ 159 Reporting of Infringements  
§ 160 Whistleblowing  
§ 161 Publication of Decisions

**Section 4  
Market Abuse Punishable by a Court of Law**

§ 162 Scope of Application of Sanctions Imposed by a Court of Law  
§ 163 Inside Dealings and Disclosure of Inside Information Punishable by a Court of Law  
§ 164 Market Manipulation Punishable by a Court of Law

**Section 5  
Special Provisions for Criminal Proceedings Including Investigations by the Public Prosecutor**

§ 165 Application of the Code of Criminal Procedure  
§ 166 Special Jurisdiction of the Regional Criminal Court of Vienna (*Landesgericht für Strafsachen Wien*)  
§ 167 Mode of Procedure of the FMA when the Court has Jurisdiction  
§ 168 Exercise of Tasks in the Administration of Justice under Criminal Law by the FMA  
§ 169 Position and Rights of the FMA in Criminal Proceedings  
§ 170 Consultation Rights and Information Rights of the FMA  
§ 171 Discontinuance of Proceedings and Withdrawal from Prosecution  
§ 172 Requirements for Serving Documents  
§ 173 Costs and Cash Reimbursements

**Section 6  
Procedural Provisions**

§ 174

**Section 7  
Transitional Provisions**

§ 175

**Main Part 4  
Short Selling and Credit Default Swaps**

§ 176

**Main Part 5  
Shareholder Rights  
Section 1  
General Provisions**

§ 177 Scope of Application  
§ 178 Definitions

**Section 2  
Identification of shareholders, transmission of information and  
easier exercise of shareholder rights**

§ 179 Identification of shareholders  
§ 180 Transmission of information  
§ 181 Facilitation in the exercise of shareholder rights  
§ 182 Non-discrimination, proportionality and transparency of costs  
§ 183 Third-country intermediaries  
§ 184 Information on implementation

**Section 3  
Transparency of institutional investors, asset managers and proxy advisors**

§ 185 Engagement policy  
§ 186 Investment strategy of institutional investors and arrangements with asset managers  
§ 187 Transparency of asset managers  
§ 188 Transparency of proxy advisors

**Section 4  
Penal Provisions**

**§ 189**

**Main Part 6  
Final Provisions**

§ 190  
§ 191  
§ 192  
§ 193 Equal Treatment in Language  
§ 194 Entry into Force  
§ 195 Expiry

**Main Part 1**  
**Market Infrastructure**

**Section 1**  
**Definitions**

**§ 1.** For the purposes of this main part, the following definitions apply:

1. Securities exchanges: Domestic markets in the meaning of Directive 2001/34/EC on which trading in financial instruments pursuant to § 1 No 7 of the Securities Supervision Act 2018 – (WAG 2018), Federal Law Gazette I No 107/2017 takes place. Foreign legal tender, coins, and precious metals may also be traded on a securities exchange and the related ancillary transactions to such trades executed; this does not affect § 44 of the Act on Emission Allowances 2011, Federal Law Gazette I No 118/2011.
2. Regulated market: A regulated market in the meaning of Article 4 para 1 No 21 of Directive 2014/65/EU;
3. General commodity exchanges: General commodity exchanges are exchanges on which those commodities are traded that are eligible for trading on an exchange and have not been explicitly assigned to trading on a regulated market or to an exchange for agricultural products as well as on which all ancillary transactions related to commodities trading are conducted.
4. Financial instrument: A financial instrument pursuant to § 1 no 7 Securities Supervision Act 2018.
5. Persons: Persons or entities that engage professionally in transactions in financial instruments, in particular, investment firms and banks.
6. Debt instruments: Debt securities and other transferable receivables in securitized form with the exception of securities equivalent to shares or which upon conversion or exercise of the rights attached to them entitle the holder to acquire shares or securities equivalent to shares.
7. Shares: Shares are certificates that represent shares if these also carry exercisable voting rights.
8. Issuer shall be understood to mean a natural person or a legal entity whose securities have been admitted to trading on a regulated market. In the case of certificates admitted to trading on a regulated market, the issuer shall be defined as the issuer of the securities represented in which case it is also irrelevant if these securities have been admitted to trading on a regulated market or not.
9. Shareholder shall be any person under private or public law that holds, indirectly or directly:
  - a) Shares of the issuer in its own name and for its own account,
  - b) Shares of the issuer in its own name, but on behalf of another natural person or legal entity,
  - c) Certificates in which case the holder of the certificate is considered the shareholder of the underlying shares represented by the certificates;
10. Multilateral trading facility (MTF): A multilateral trading system.
11. Organized trading system (OTF): An organized trading system pursuant to § 1 No 25 Securities Supervision Act 2018.
12. Trading venue: A trading venue pursuant to § 1 No 26 Securities Supervision Act 2018.
13. Securities: Transferable securities pursuant to § 1 No 5 Securities Supervision Act 2018 with the exception of money market instruments pursuant to § 1 No 6 Securities Supervision Act 2018.
14. Home member state:
  - a) In the case of an issuer of debt securities with a denomination of less than EUR 1,000 or of an issuer of shares,
    - aa) for issuers with their registered office in the EEA, the member state in which it has its registered office,
    - bb) for issuers with their registered office in a third country, the member state selected by the issuer from the member states in which its securities are admitted to trading on a regulated market. The choice of the home member state shall remain valid until the issuer selects a new home member state pursuant to lit c and has published the home member state selected pursuant to § 119 para 7;

The definition “home member state” shall apply to debt securities that are denominated in a currency other than the euro if the value of the denomination on the issuing day corresponds to less than EUR 1,000, provided it is not close to EUR 1,000;

  - b) for any issuer of the member state not covered by lit a, the member state which the issuer has selected from the state of its registered office and the member states in which its securities are admitted to trading on a regulated market within their sovereign territory. An issuer shall not be permitted to select more than one member state as a home member state. The selection shall be valid for at least three years unless the securities of the issuer

- are no longer admitted to trading on any regulated market in the European Union or the issuer is subject to the provisions of lit a or lit c;
- c) for issuers whose securities are no longer admitted to trading on a regulated market in its home member state pursuant to lit a sublit bb or lit b, but instead are admitted to trading in one or several member states, the new home member state that the issuer has selected from among the member states in which its securities are admitted to trading on a regulated market and the member state in which it has its registered office;
  - d) for an issuer who has failed to notify its home member state pursuant to lit a sublit bb or lit b within three months of the initial admission of its securities to trading on a regulated market pursuant to § 119 para 8, the member state in which the securities of the issuer are admitted to trading on a regulated market. If the securities of the issuer are admitted to trading on regulated markets that are located or operated across several member states, these member states shall be considered the home member states of the issuer until it selects a single home member state and notifies this pursuant to § 119 para 8.
15. The host member state shall be a member state in which the securities have been admitted to trading on a regulated market as long as it is not the home member state.
  16. Market maker shall be a person or entity who is willing to engage in trading on a permanent basis in financial markets for its own account by buying and selling financial instruments with its own capital at prices it determines;
  17. A market operator is an entity that manages and operates a regulated market including an Austrian exchange operating company that operates a securities exchange; a market operator may be the regulated market itself.
  18. Exchange operating company: an exchange operating company pursuant to no 17 or the operator of a general commodity exchange.
  19. Exchange members: persons or legal entities who pursuant to § 29 have access to regulated markets or MTFs.
  20. Exchange traders: exchange traders are those natural persons authorized to place orders and to conclude transactions on the exchange or within the trading system in the name of exchange members and have been admitted as traders to the exchange by the exchange operating company.
  21. Operator: a person or entity in the meaning of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowances trading within the Community and amending Directive 96/61/EC OJ L 275 of 25 October 2003, p. 32, as amended by Decision (EU) 2015/1814, OJ No L 264 of 9 October 2015, p. 1.
  22. Regulated information shall include all information that must be disclosed by an issuer or any other person who has applied for the admission to trading of securities of the issuer on a regulated market without the consent of the issuer pursuant to § 119 para 7 as well as the information of the home member state selected pursuant to no 14 lit a sublit bb, lit b, lit c or lit d as well as the information pursuant to § 126 and § 128.
  23. Matched principal trading means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, provided both buy side and sell side are executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.
  24. Small and medium-sized enterprises (SME) for the purposes of this Directive means companies that had an average market capitalization of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years.
  25. SME growth market means an MTF registered as an SME growth market in accordance with Article 82;
- § 2.** Furthermore, unless otherwise provided for in this federal act, the definition of terms shall apply as set out in the Banking Act, Federal Law Gazette No 532/1993, the Securities Supervision Act 2018, Regulation (EU) No 596/2014 Regulation (EU) No 600/2014, Delegated Regulation (EU) 2017/565, Delegated Regulation (EU) 2017/567 and Regulation (EU) No 575/2013.



**Section 2**  
**Regulated Market**

**Subsection 1**

**General**

**Issuance of Licenses**

**§ 3 (1)** The exchange operating company shall guarantee that the regulated markets it manages and operates as well as other securities exchanges or general commodities exchanges it operates comply with the requirements of this federal act at all times. If an exchange operating company under this federal act is an enterprise charged with the fulfilment of sovereign functions, it shall carry out the tasks assigned to it bearing in mind the objectives of maintaining a functioning securities industry for the benefit of the national economy and of safeguarding the interests of investors.

(2) The management and operation of a regulated market or of any other securities exchange shall require a license from the Financial Market Authority (FMA); the operation of a general commodities exchange shall require a license issued by the Minister of Science, Research and Economy.

(3) An exchange operating company authorized to manage and operate a regulated market has the right to operate a multilateral trading system (MTF) or an organized trading system (OTF) with the approval of the FMA without requiring a separate license pursuant to § 3 Securities Supervision Act 2018. Approval is to be granted when compliance is given with § 75 of this federal act and Title II of Regulation (EU) No 600/2014 and with respect to the operation of an MTF; moreover, with respect to § 77 of this federal act as well as regarding the operation of an OTF in compliance with § 78 and § 79 of this federal act. During operation of an MTF or OTF by an exchange operating company, the organizational requirements pursuant to Article 3, Article 21 through Article 34 of Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU as regards organizational requirements for investment firms and the operating conditions and with respect to the defined terms for the purposes of that Directive, OJ No L 87, p. 1 (Delegated Regulation (EU) 2017/565, and § 33 as well as § 36 through § 46 Securities Supervision Act (2018) shall be deemed fulfilled if the exchange operating company meets § 21. No separate proof of qualification to manage an MTF or OTF shall be required if the management of an MTF or OTF is conducted by a managing body that meets the requirements stated in § 4 para 1.

(4) The license shall be void unless issued in writing; certain conditions and obligations may be attached to the license. The withdrawal of the license must be notified to the European Securities and Markets Authority – ESMA (Regulation (EU) No 1095/2010).

(5) The applicant shall attach the following information and documents to the application for a license:

1. registered office and legal form;
2. the articles of association;
3. the business plan which describes the organizational structure of the company and the internal control procedures; furthermore, the business plan must contain a budget accounting plan for the first three business years;
4. a description of the available trading and settlement systems;
5. the amount of unrestricted and unencumbered start-up capital freely available in Austria to the managing directors;
6. the identity and the size of the shares held by shareholders with a qualified interest in the firm as well as information on the group's structure if such shareholders form part of a group company;
7. the names of the managing directors to be appointed and their qualification with regard to the operation of the company.

**§ 4. (1)** The license shall be granted provided:

1. the company is to be operated under the legal form of a joint stock corporation or a European company (SE);
2. the planned business of the company is not expected to pose a threat to maintaining a properly functioning securities industry for the benefit of the national economy or in terms of safeguarding the vital interests of the investing public; this shall apply, in particular, with regard to its impact on the liquidity of markets.
3. the persons holding a qualified interest in the company fulfill the profile required in terms of a sound and prudent management of the company;
4. the supervisory authorities are not impeded in the proper execution of their duty of supervision by the fact that the company has close links to other natural persons or legal entities;

5. the legislation or administrative provisions of a third country which govern a natural person or legal entity closely related to the company, or difficulties in the application of these provisions the supervisory bodies do not hinder the proper fulfillment of supervisory duties;
6. the start-up capital is at least EUR 5 million and is freely available unrestricted and unencumbered to the managing directors in the member states and the material and personnel resources of the company serve to ensure the best possible management and administration of the stock exchange. The start-up capital shall comprise only one or more of the items referred to in Article 26 (1) lit a to e of Regulation (EU) No 575/2013;
7. there are no grounds for exclusion for any of the managing directors in the meaning of § 13 paras 1 to 3, 5 and 6 Commercial Code 1994, Federal Law Gazette No 194/1994 and no bankruptcy proceedings have been instituted on the assets of any of the managing directors or any legal entity that is not a natural person and over whose business said managing directors have or have had a substantial influence unless a reorganization plan was ordered and fulfilled; this shall also apply to similar cases having occurred abroad;
8. no investigation procedures are being conducted against any of the managing directors on grounds of an offense committed intentionally, which is punishable by imprisonment of a term of more than one year, until the final decision terminating the criminal proceedings is reached;
9. the managing directors have the required professional background to qualify for the position and the personal qualifications and experience required to run the company. The professional qualification of managing directors includes adequate theoretical and practical knowledge in areas relating to the operation of an exchange as well as management experience; the expert qualification for the management of an exchange operating company shall be assumed to be given if the persons are proven to have at least three years of management experience at a company of comparable size and type of business or if the managers proposed are proven to already managed an authorized regulated market in the meaning of Directive 2014/65/EU;
10. no reasons for exclusion from the position as a managing director of an exchange operating company within the meaning of nos 7, 8, 9 or 14 exist with regard to any of the managing directors who is a citizen of any country other than Austria, in the country of which he or she is a citizen; this must be confirmed by the exchange supervisory authority of the respective director's home country; however, if such a confirmation cannot be obtained, the respective managing director shall furnish the required evidence, certify the absence of the named reasons for exclusion and file a declaration as to whether the named reasons for exclusion exist;
11. at least one of the managing directors has the center of his/her vital interests in Austria;
12. at least one of the managing directors has an active command of the German language;
13. the company has at least two managing directors and the company's articles of association stipulate that it shall not be permitted to confer the power of sole representation, full power of attorney or sole commercial power of attorney for the entire scope of business exclusively to any one of the managing directors;
14. neither one of the managing directors engages in a principal employment in a field other than in the securities industry;
15. the registered office and the main administration are located in Austria;
16. the available trading and settlement systems comply with up-to-date industry standards for exchange trading.

(2) An exchange operating company shall only be registered in the Companies Register if the required legal certificates have been submitted in the original or as certified duplicates (counterparts). The competent court shall forward decisions regarding the registration in the Companies Register to the supervisory authorities and to Oesterreichische Nationalbank.

#### **Withdrawal of a License**

**§ 5 (1)** The Financial Market Authority (FMA), and in the case of general commodity exchanges, the Federal Minister of Science, Research and Economy have the right to withdraw the license if the exchange operations to which it refers

1. have not started within one year of the granting of the license, or
2. have not been conducted for more than six months.

(2) The Financial Market Authority FMA, and in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy must withdraw the license if the exchange operations to which it refers

1. was granted on the basis of incorrect information or deceptive acts or otherwise surreptitiously obtained,
2. the company fails to fulfill its obligations toward its creditors,
3. the requirements for the granting of the license pursuant to § 4 paragraph 1 cease to be fulfilled after the license has been granted, or

4. the company continually fails to fulfill its duties relating to the management and the administration of an exchange adequately and in accordance with the regulations.

(3) A notification of withdrawal of a license shall be equivalent to a dissolution order for the company unless the field of activity of management and administration of an exchange is deleted from the company's articles of association, and its business is changed in line with this order (§ 99 paragraph 1) within a period of three months after the notification has become final. The Financial Market Authority FMA, and in the case of general commodity exchanges the Federal Minister for Science, Research and Economy, must serve a counterpart of this office notice to the Companies Register; withdrawal of a license must be registered in the Companies Register.

(4) Upon request of the Federal Attorney's Office to which the FMA, or, in the case of a general commodity exchange, the Federal Minister for Science, Research and Economy, shall take recourse, the court shall appoint liquidators, if the persons otherwise charged with the liquidation cannot guarantee proper liquidation. If the FMA, or, in the case of a general commodity exchange, the Federal Minister for Science, Research and Economy, is of the opinion that the persons charged with the task fail to safeguard proper liquidation, it shall request the appointment of appropriate liquidators through the Federal Attorney's Office at the court having original jurisdiction in commercial matters in the area in which the respective exchange operating company has its registered office; the court decides in proceedings on non-contentious matters.

#### **Expiry of a License**

**§ 6** (1) The license shall expire:

1. upon expiration of the time period for which it was granted;
2. if conditions arise giving grounds for dissolution (§ 3 paragraph 4);
3. if it is returned by the licensee;
4. upon completion of the liquidation of the exchange operating company;
5. with the institution of bankruptcy proceedings on the assets of the exchange operating company;
6. when the European Company (SE) is entered into the register of the new country of its registered office.

(2) The expiration of the license shall be established by decree of the FMA, or, in the case of general commodity exchanges, by decree of the Federal Minister for Science, Research and Economy. § 5 paragraph 3 and 4 shall apply.

(3) The return of a license (para 1 no 3) shall only be permissible if done in writing and only if the management and administration of the exchange has previously been taken over by another exchange operating company.

#### **Trading Surveillance**

**§ 7** (1) The exchange operating company shall conduct surveillance of exchange trading and reach any decisions required during the trading session in accordance with the General Terms and Conditions of Business pursuant to § 23 and shall also ensure compliance with the General Terms and Conditions of Business.

(2) Trading surveillance shall be done using an adequate technical surveillance system, which captures exchange trading data systematically and completely, conducts analyses and enables any investigations required.

(3) The exchange operating company may request an issuer to hand over all legally relevant reference data relating to its financial instruments provided this is required for compliance with the conditions of Article 27 of Regulation (EU) No 600/2014 and Article 4 of Regulation (EU) No 596/2014.

(4) In the case of suspected market conditions that may disrupt the market, of modes of behavior that indicated prohibited activities pursuant to Regulation (EU) No 596/2014, in the case of system disruptions relating to a financial instrument or the violation of other regulations which are the competence of the FMA, the exchange operating company shall immediately inform the FMA. The FMA must furthermore report the information received to ESMA and the competent authorities of the other member states. Insofar as the information relates to activities that may indicate prohibited behavior pursuant to Regulation (EU) No 596/2014, the FMA must believe in the existence of such suspicious behavior before it notifies the ESMA and the competent authorities of the other member states.

(5) Should the trading surveillance system pursuant to para 2 be inadequate for ensuring the required surveillance of trading, the FMA shall order the exchange operating company to establish a state in compliance with the requirements pursuant to para 2 within a reasonable period of time pursuant to § 93 para 2 no 4 under penalty of a fine; the Administrative Enforcement Act (*Verwaltungsvollstreckungsgesetz, VVG*), Federal Law Gazette 53/1991 shall apply.

(6) Should the exchange operating company learn about, suspect or have well-founded reasons to believe that acts have been committed pursuant to § 16 para 1 nos 1, 2 or 4 of the Financial Markets

Anti-Money Laundering Act (*Finanzmarkt-Geldwäschegesetzes – FM-GwG*), Federal Law Gazette I No 118/2016, it shall report this immediately to the Financial Intelligence Unit (*Geldwäschemeldestelle*) (§ 4 para 2 of the Criminal Intelligence Service Act (*Bundeskriminalamt-Gesetzes – BKA-G*), Federal Law Gazette I No 22/2002) and until the matter is clarified it shall refrain from any further processing and settlement of transactions unless there is a risk that a delay in the transaction would make the investigation more difficult or hinder such investigation. This shall also apply if there are well-founded reasons to suspect that the contractual partner in fact participates in the transactions pursuant to § 16 para 1 nos 1, 2 or 4 of the Financial Market Money Laundering Act. The exchange operating company is authorized to demand that the Financial Intelligence Unit (FIU) decide as to whether there are objections to the immediate settlement of a transaction; if the Financial Intelligence Unit fails to respond by the close of the third subsequent banking workday, the transaction may be settled without delay.

(7) The exchange operating company and, if applicable, its staff must cooperate fully with the Financial Intelligence Unit (FIU) by supplying, upon request directly or indirectly, all information the FIU may deem necessary – irrespective of a notification of suspicious activities pursuant to para 6 – to prevent or prosecute money laundering or terrorism financing. The Financial Intelligence Unit must make all current information on the methods of money laundering and terrorism financing available to the exchange operating company and inform it of any indications of suspicious transactions. Likewise, it must also ensure a timely response regarding the effectiveness of notifications of suspicious activities in the case of money laundering or terrorism financing and the measures taken in response.

(8) The Financial Intelligence Unit has the power to order the discontinuation or postponement of any transaction in progress or planned, which must be reported pursuant para 6. The Financial Intelligence Unit must inform the Public Prosecutor without undue delay of such order. The contractual partner must also be notified, with such notification of the contractual partner being permitted to be postponed at the longest five banking workdays if the notification would prevent an investigation of the beneficiary of a suspicious transaction. The exchange operating company must be informed of the postponement of the notification of the contractual partner. The notification sent to the contractual partner must point out the respective party's or any other involved person's right to lodge a complaint with the Federal Administrative Court on the grounds of an infringement of its rights. The Financial Intelligence Unit must repeal the order as soon as the grounds on which it was issued cease to exist or the public prosecutor issues a declaration stating that the conditions for confiscation pursuant to § 109 no 2 and § 115 para 1 no 3 Code of Criminal Procedure 1975, Federal Law Gazette no 631/1975 are no longer given. The order also loses effect

1. when six months have passed since the order was issued;
2. as soon as the Court has passed a final decision on the order for confiscation pursuant to § 109 no 2 and § 115 para 1 no 3 Code of Criminal Procedure.

(9) The exchange operating company must keep all procedures that serve the performance of paras 6 to 8 secret from its contractual partners and third parties. As soon as the contractual partner is notified by the Financial Intelligence Unit of the order pursuant to para 8, the exchange operating company shall be authorized to refer the contractual partner to the Financial Intelligence Unit, however, only upon its request; with the consent of the Financial Intelligence Unit, it shall also have the power to inform the contractual partner directly of the order.

(10) Claims for damages shall be ruled out when these are based on the circumstance that the exchange operating company or its staff delayed or failed to execute a transaction due to negligent lack of knowledge that the suspected money laundering or terrorism financing was incorrect.

(11) The exchange operating company must ensure that individuals, including the staff and representatives of the liable party, who file an internal report or notify the Financial Intelligence Unit of any suspicions of money laundering or terrorism financing are protected from threats or hostilities, and above all, from suffering disadvantages or discrimination at the workplace.

(12) For the purpose of preventing or prosecuting money laundering or terrorism financing, the Financial Intelligence Unit has the power to investigate data gathered from natural persons or legal entities or from any other institution, which is a legal entity, and to process such data in a data application together with other data it has processed or is permitted to process in execution of federal laws or provincial laws. The data must be deleted as soon as it is no longer needed for the performance of duties, but at the latest after five years. Transmission of the data is permitted in accordance with § 4 para 2 nos 1 and 2 Criminal Intelligence Service Act.

#### **Coordination of Trading Surveillance and Exchange Supervision**

**§ 8** (1) The Financial Market Authority (FMA) shall be authorized to use the trading surveillance system pursuant to § 7 para 2 when conducting investigations for which it is responsible by virtue of this federal law and pursuant to the Securities Supervision Act 2018, or, to order the exchange operating company to carry out such investigations.

(2) The exchange operating company shall provide the FMA with statistical data, in particular with trading volume figures and the prices of instruments traded on regulated markets. The FMA shall be empowered to determine by decree the classification and the type of transmission to be used or to dispense by decree with such transmission if the information necessary for the fulfillment of their duties can also be obtained by means of another appropriate information system; in this case, the exchange operating company shall, however, be also obliged to promptly answer any inquiries from the FMA about stock exchange trading.

(3) The exchange operating company shall, irrespective of paragraph 2, be obliged to give the FMA any relevant information it may require to carry out its supervisory tasks and to assist the FMA in conducting its investigations. If there is reason to suspect that any provisions have been infringed upon which are within the scope of competence of either the exchange operating company, in particular, infringements of the trading rules, or of the FMA, the two bodies shall cooperate and provide each other with the necessary information. However, the FMA shall be authorized to order the exchange operating company to discontinue investigations or any other measures if these are likely to make it difficult or impossible to investigate the facts of the case pursuant to § 154, § 155, § 163 or § 164.

### **Trading Rules**

**§ 9** (1) Exchange trading must be conducted in accordance with transparent and non-discriminatory rules based on objective criteria. Above all, no simulated transactions or transactions for the purpose of damaging third parties may be concluded. The exchange operating company shall issue the regulations necessary for the protection of investors and for the maintenance of the good reputation of exchanges in Austria that provide for the equal treatment of all market participants. These regulations shall comply with the provisions of § 119 para 4 for stock exchanges.

(2) The exchange operating company shall issue rules and regulations of trading based on the common usages for the instruments traded on the exchange so as to fulfill the requirements of promptness and effective trading. The rules and regulations of trading shall also state the procedure to be followed if a transaction is not fulfilled or a Member of the exchange goes bankrupt. If trading in foreign means of payment is involved, Oesterreichische Nationalbank shall be heard beforehand.

(3) The exchange operating company shall issue rules for the settlement of exchange transactions in the form of General Terms and Conditions of Business (§ 23) to ensure promptness and fulfillment, taking into account international developments, and shall also set up a clearing and settlement agency for this purpose; in the case of general commodity exchanges, it shall not be obligatory to set up a clearing and settlement agency. The exchange operating company, however, is free to contract legal entities under private law to set up a settlement and clearing agent if it can guarantee the proper settlement of exchange transactions. If a settlement and clearing agent is charged with the clearing of exchange trades, it shall have the right to carry out exchange transactions in options and financial futures contracts for its own account and to fulfill obligations arising therefrom including the delivery and receipt of securities; the provisions of the Banking Act shall not apply to such settlement and clearing agencies, however, these settlement and clearing agencies may neither conduct banking operations nor participate in stock exchange transactions. This shall apply analogously, if the settlement and clearing agencies are charged with said services for trading on an MTF or OTF operated by the exchange operating company, and also if it sets up its own settlement and clearing agent and acts as a settlement and clearing agent in its own right. The settlement and clearing agent shall provide all and any information pertaining to the settlement and fulfillment of stock exchange transactions to the supervisory authorities, the exchange operating company and the Stock Exchange Commissioner as these may be needed for the fulfillment of their duties.

### **Capacity of the Systems and Contingency Measures**

**§ 10** (1) The exchange operating company must have in place effective systems, procedures and arrangements to ensure its trading systems are resilient, have sufficient capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of severe market stress. The systems of the exchange operating company must be fully tested and have effective contingency procedures in place to guarantee the continuity of business operations in the event of disruptions to the trading system.

(2) The exchange operating company shall

1. have written agreements with all exchange members pursuant to § 1 no 19, for pursuing a market making strategy on the regulated market operated by the exchange operating company, and
2. have schemes to ensure that a sufficient number of exchange members participate in the agreements pursuant to no 1 which require them to enter firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis, where such a requirement is appropriate to the nature and scale of the trading on said regulated market.

(3) The written agreements pursuant to para 2 no 1 must define at least the following:

1. the obligations of the exchange member in relation to the provision of liquidity and, where applicable, any other obligation arising from participation in the scheme referred to in para 2 no 2;
2. any incentives in terms of rebates or other forms offered by the regulated market to an investment firm so as to provide liquidity to the market on a regular and predictable basis and, where applicable, any other rights accruing to the exchange member as a result of participation in the scheme referred to in para 2 no 2.

(4) The exchange operating company must monitor and enforce compliance by exchange members with the requirements of such binding written agreements pursuant to para 2 no 1 and para 3. The exchange operating company must inform the FMA of the contents of the legally-binding agreements and upon request of the FMA must present all further information that is required by the FMA to ascertain if the exchange operating company complies with the provisions of this paragraph.

(5) The exchange operating company must have effective procedures and arrangements in place to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

(6) The exchange operating company must be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, change or correct any transaction. The exchange operating company must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users, and is sufficient to avoid significant disruptions to orderly trading.

(7) The exchange operating company must report to the FMA the parameters for halting trading and any material changes to those parameters in a consistent and comparable manner. The FMA must forward these reports to the ESMA. In the event of a trading halt by the exchange operating company, the exchange operating company must, provided trading on the regulated market is material in terms of liquidity in that financial instrument, have systems and procedures in place necessary to ensure that it will notify the FMA in order for the FMA to coordinate a market-wide response and determine whether it is appropriate to halt trading on other trading venues on which the financial instrument is traded until trading resumes on the market of the exchange operating company.

(8) The exchange operating company must ensure that its rules on co-location services are transparent, fair and non-discriminatory.

(9) The exchange operating company must make available to the FMA, upon request, data relating to the order book and must grant the FMA access to the order book so as to enable it to monitor the trades.

#### **Algorithmic Trading**

**§ 11** (1) The exchange operating company must have effective systems, procedures and measures in place including the requirement that exchange members and exchange traders conduct the appropriate tests of algorithms and create an environment to simplify such tests. The exchange operating company must ensure that algorithmic trading systems do not create disruptive trading conditions or contribute to such disruptive conditions, and must control any disruptive market conditions that may arise from algorithmic trading systems. These systems must accomplish the following tasks:

1. The systems must limit the ratio of unexecuted trade orders to trades entered into the system by an exchange member or exchange trader with the aim of slowing the volume of orders if there is a risk that the system's capacity will be reached.
2. They serve to limit and enforce the smallest possible tick size (interval) permitted to be executed on the market.

(2) The exchange operating company must require exchange members or exchange traders to mark trades so as to be able to identify orders generated by algorithmic trading, the different algorithms used for the generation of orders and the relevant persons initiating such orders. The exchange operating company must make this information available to the FMA upon request.

**§ 12** The exchange members and exchange traders are under the obligation to guarantee a reasonable ratio of orders entered, changes to orders and order cancellations to the number of orders actually executed (order-transaction ratio) in order to avoid risks to orderly exchange trading. Exchange members and exchange traders must determine within one month the order-transaction ratio for each financial instrument based on volume in number of orders for each of the orders and transactions. An appropriate order-to-transaction ratio shall be deemed given when it is economically reasonable based on liquidity in the financial instrument or the concrete market situation or the function of company concerned. The general terms and conditions of business of the exchange operating company must include detailed provisions regarding an appropriate order-to-transactions ratio for certain classes of financial instruments while taking into consideration the objectives of maintaining a functioning

securities industry for the benefit of the national economy and for safeguarding the interests of investors.

#### **Direct Electronic Access**

**§ 13** (1) An exchange operating company which offers direct electronic access must have effective systems, procedures and measures in place to ensure that exchange members are only permitted to provide such a service if they have the required license to act as a credit institution or an investment firm. To this end, the following requirements must be met:

1. The exchange operating company must define and apply appropriate criteria regarding the suitability of persons who are permitted to obtain such access.
2. The responsibility for the requirements of this federal act for orders and trades placed and executed through this service must remain with the exchange member.

(2) The exchange operating company shall define appropriate standards for risk controls and trading thresholds via the electronic access pursuant to para 1 and must be able to distinguish – and if necessary stop – orders or trading by a person using direct electronic access from other orders or trading by exchange members.

(3) The exchange operating company must have arrangements in place to suspend or terminate the availability of direct electronic access provided by an exchange member to a client in the case of non-compliance with this paragraph.

#### **Tick Sizes**

**§ 14** The exchange operating company must adopt regulations on tick sizes (intervals) for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments as well as other financial instruments. The exchange operating company must define an appropriate tick size for the smallest possible price change in financial instruments traded so as to reduce the negative effects on market integrity and liquidity.

**§ 15** (1) The tick size regulations referred to in § 14 must meet the following requirements:

1. Tick sizes (intervals) must be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining a further narrowing of spreads;
2. Tick sizes must be suitably adapted for each financial instrument.

(2) When defining the minimum tick size, special attention should be devoted to ensuring that the price discovery mechanism and the objective of an appropriate order-transaction ratio pursuant to § 12 are not impaired.

#### **Synchronization of Clocks Used in Trading Operations**

**§ 16** The exchange operating company, all exchange members and exchange traders are required to synchronize the clocks they use for trading to record the date and time of events that must be reported.

#### **Trading Halts and Exclusion of Financial Instruments from Trading on Regulated Markets**

**§ 17** (1) The exchange operating company shall halt (suspend) trading in a financial instrument that no longer meets the rules of the regulated market irrespective of § 93 para 2 no 7 if such measure does not work against investor interests or the objective of having a properly functioning market.

(2) The exchange operating company that halts trading in a financial instrument or removes it from trading pursuant to para 1 must also halt trading in derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 which are related to such financial instrument or reference such financial instrument or exclude them from trading where this is necessary to support the attainment of the objectives of the trading halt in the underlying financial instruments or to exclude these from trading. The exchange operating company shall make public its decision on the suspension from trading of the financial instrument and any related derivatives and communicate the relevant decisions to the FMA.

(3) The FMA, in whose jurisdiction the suspension or removal originated pursuant to para 1, shall require that other domestic regulated markets, MTFs, OTFs and systematic internalizers who trade in the same financial instrument or derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 that relate to or reference that financial instrument, also suspend or remove the financial instrument or derivatives from trading, where the suspension or removal pursuant to para 1 is due to suspected market abuse, a take-over bid or the non-disclosure of inside information on the issuer or the financial instrument thereby infringing Articles 7 and 17 of Regulation (EU) No 596/2014 except where such suspension or removal would cause significant damage to investors' interests or the orderly functioning of the market.

(4) Should the exchange operating company halt trading in a financial instrument or in derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 that are related to said financial instrument or reference it, it must publish this decision in a medium that is accessible to the general public and inform the FMA of the suspension of trading; in this event, the exchange operating company

shall send all relevant information to the FMA. Additionally, the exchange operating company may inform the operators of other regulated markets directly of the trading suspension for the concerned financial instrument or derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 that are related to said financial instrument or reference it. The FMA must inform ESMA and the competent authorities of other member states of the trading halt.

(5) If the exchange operating company does not proceed of its own accord pursuant to para 1, the FMA must order the suspension of trading in a financial instrument or in derivatives on one or several regulated markets pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 that are related to said financial instrument or reference it, if this is in the interest of an orderly functioning market and does not counteract investor interests. The FMA must immediately publish its decision and inform ESMA and the competent authorities of other member states of the action taken. The FMA must explain its decision should it decide not to exclude or suspend the financial instrument or derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 from trading that are related to said financial instrument or reference it.

(6) The FMA must immediately inform the exchange operating company should it receive information from a competent authority of another member state relating to a financial instrument or derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 relating to said financial instrument or referencing it and may result in suspension from trading from the Official Market or another domestic regulated market or a systematic internalizer or from trading in an MTF or an OTF operated by the exchange operating company. The exchange operating company must subsequently inform the FMA of the suspension from trading of the concerned financial instrument or derivatives pursuant to Annex I Section C points (4) to (10) Directive 2014/65/EU that relate to the financial instrument or reference it.

(7) Paragraphs 1 to 6 also apply when the trading halt is lifted in a financial instrument or derivatives referred to § 1 no 7 lit d to k Securities Supervision Act 2018 that relate to said financial instrument or reference it.

#### **Position Limits and Position Management Controls for Commodity Derivatives**

**§ 18** (1) The FMA shall define in line with the methodology for calculation determined by ESMA position limits on the maximum size of a net position which a person can hold at any time pursuant to § 1 no 5 in commodity derivatives traded on trading venues and in economically equivalent OTC contracts. The position limits shall be defined based on all positions held by a person and those held on behalf of such person at an aggregate group level and must serve the purpose of

1. preventing market abuse;
2. supporting orderly price discovery and clearing and settlement conditions, including preventing market-distorting positions, and ensuring, in particular, convergence between the prices of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery on the market for the underlying commodity.

Position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly that relate to the commercial activity of that non-financial entity.

(2) By way of departure from para 1, the FMA does not need to define position limits itself for commodity derivatives for which a central competent authority (Article 57 (6) Directive 2014/65/EU) of another member state has already defined position limits that apply within Austria.

(3) The FMA must define position limits for every contract on a commodity derivative traded on markets. When doing so the FMA must apply the calculation methodology developed by ESMA. The position limits defined by the FMA shall apply also to economically equivalent OTC contracts. In the event of material changes to deliverable quantities or to open contract positions or in the event of other material changes in the market, the FMA must review the position limits it has calculated based on the deliverable quantities and open contract positions and must then recalculate the position limits based on the methodology developed by ESMA.

**§ 19** (1) The FMA must consult ESMA regarding the exact position limits it intends to calculate using the calculation methodology developed by ESMA pursuant to Article 57 (3) Directive 2014/65/EU. Once ESMA has been consulted, the FMA must adjust the position limits to match the ESMA statement or explain to ESMA the reasons for a material departure therefrom and must then publish the reasons for its mode of procedure.

(2) If the same commodity derivative is traded in significant volumes on trading venues in several member states, the FMA shall be the central competent authority and must define the uniform position limit, if the largest volumes of this commodity derivative are traded in Austria. The uniform position limit must be valid for all trading in this contract. The FMA as central competent authority must consult the competent authorities of other trading venues on which the commodity derivative is traded in significant volumes with respect to the uniform position limit to be applied and to any revisions to said uniform position limit. In the event of differences of opinion, the FMA as the central competent



authority, must contact ESMA in the exercise of its powers pursuant to Article 19 Regulation (EU) No 1095/2010 in order to resolve the dispute.

(3) The FMA must collaborate with the competent authorities of the trading venues where the same commodity derivative pursuant to para 2 is traded and with the competent authorities of position holders in that commodity derivative in order to exchange the relevant data required for the monitoring and enforcement of the uniform position limit.

(4) If significant volumes are traded in a derivative within Austria pursuant to para 2 and if the FMA is consulted by the competent authority of another trading venue in its function as central competent authority, the FMA must – in the event no agreement is reached with the competent authority of the other trading venues – explain to the central competent authority why in its opinion the requirements pursuant to § 18 para 1 are not met.

(5) Investment firms or market operators that operate a trading venue on which commodity derivatives are traded must engage in position management controlling. These controlling activities must include at least the following powers regarding the trading venue:

1. monitoring the open contract positions of every person,
2. with respect to every person, access to information, including all relevant documents on the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concerted arrangements and any related assets or liabilities in the underlying market,
3. the right to require a person to terminate or reduce a position, on a temporary or permanent basis as the specific case may require and to take appropriate action to ensure the closing out or reduction of the position if the person does not comply, and
4. where appropriate, require a person to pump liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

(6) The position limits and the position management controls must

1. be transparent and non-discriminatory,
2. define the persons to which they apply,
3. take account of the nature and composition of market participants and of how they use the contracts admitted to trading.

(7) The investment firm or market operator that operate the trading venue must inform the competent authority of the details of the position management controls. The FMA must communicate this information as well as the details of the position limits it has defined to ESMA.

(8) The FMA shall not impose any position limits more restrictive than those pursuant to para 1. An exception is made in cases in which the more restrictive limits are objectively justified and reasonable taking into account the liquidity of the specific market and the orderly functioning of that market. The FMA must publish on its website the details of the more restrictive position limits it has imposed. The position limits published shall be effective for no longer than six months as of the day of publication on the website of the FMA and may be prolonged by another six months as a maximum provided the reasons continue to exist, otherwise they expire automatically after the first six months. If more restrictive position limits are imposed, the FMA must notify this to ESMA and explain the reasons. Once ESMA has been consulted, the FMA must adjust the position limits to match the ESMA statement or explain to ESMA the reasons for any departure therefrom and then publish the reasons for its mode of procedure on its website.

(9) The FMA must impose sanctions pursuant § 106 for breaches of the position limits defined in para 1 with respect to

1. positions held by persons within Austria irrespective of their place of residence or activities and who exceed the limits for commodity derivative contracts that the FMA has defined for contracts on trading venues located or operated in Austria or for which it has defined economically equivalent OTC contracts, and
2. positions held by persons, irrespective of their residence or activities in Austria, who exceed the limits for commodity derivative contracts defined by the competent authorities in other member states.

#### **Position Reports Broken Down by Position Owner Category**

**§ 20** (1) Investment firms or market operators who operate trading venues on which commodity derivatives, emission allowances or derivatives on these are traded must, unless a decree applies pursuant to para 6

1. publish a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue, specifying the number of long and short positions by such category, changes thereto since the previous report, the percentage of the total open interest

represented by each category and the number of persons holding a position in each category in accordance with para 4 and must send this report to the FMA and ESMA, if both the number of persons and their open interest exceeds the minimum thresholds,

2. send to the competent authority of a trading venue in another member state on which the commodity derivatives or emission allowances or derivatives on it are traded, or
3. send to the FMA, at least once daily, a complete breakdown of the positions of all persons including the exchange members or exchange traders and their customers on this trading venue.

(2) Investment firms that trade in commodity derivatives, emission allowances or related derivatives outside a trading venue must send at least once daily, provided a decree pursuant to para 6 states otherwise,

1. to the FMA as the competent authority for commodity derivatives or emission allowances or related derivatives traded on a domestic trading venue, or
2. to the central competent authority, if the commodity derivatives or emission allowances or related derivatives are traded in substantial volumes on several trading venues in more than one member state,

a complete breakdown of their positions in commodity derivatives or in emission allowances or related derivatives that are traded on a trading venue, and in economically equivalent OTC contracts as well as those of their clients and of the clients' clients until the end client is reached in accordance with Article 26 of Regulation (EU) No 600/2014 and Article 8 of Regulation (EU) No 1227/2011.

(3) Exchange members and exchange traders on regulated markets and MTF as well as clients of OTF must report to the investment firm or market operator that runs the trading venue the details of their own positions held through contracts traded on that trading venue at least on a daily basis as well as those of their clients and the clients of those clients until the end client is reached. Clients and the clients of those clients until the end client is reached must make the information available to the reporting party through the trading and reporting chain described.

(4) Persons holding positions in a commodity derivative or emission allowances or related derivative shall be classified by the investment firm or market operator that runs the trading venue to one of the categories set out below, depending on the nature of their main business, taking account of any applicable authorizations:

1. investment firms or credit institutions,
2. investment funds; an undertaking for collective investments in transferable securities (UCITS) as defined in Directive 2009/65/EC or an alternative investment fund manager as defined in Directive 2011/61/EU,
3. other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC, and institutions for occupational retirement provisions as defined in Directive 2016/2341,
4. trade firms,
5. in the case of emission allowances or derivatives thereof, operators with compliance obligations under § 1 no 21 Directive 2003/87/EC.

(5) The reports referred to in para 1 no 1 must specify the number of long and short positions by category of person, any changes thereto since the previous report, percent of total open interest represented by each category, and the number of persons in each category. The reports pursuant to para 1 and the breakdown pursuant to para 2 must differentiate between

1. positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities, and
2. other positions.

(6) The FMA may issue a decree suspending the reporting obligations pursuant to paras 1 and 2 for positions in certain commodity derivatives, emission allowances or related derivatives, if due to the emission volumes it can be ruled out that the position limit will be exceeded.

## **Subsection 2**

### **Organizational Requirements**

#### **Organizational Requirements for the Management and Operation of Regulated Markets**

**§ 21 (1)** The exchange operating company must

1. take measures to clearly recognize and regulate any adverse effects on the operation of the regulated market or its exchange members or exchange traders caused by conflicts of interests between the exchange operating company, its owners and the smooth functioning of a regulated market, in particular, if such conflicts of interest could hinder the fulfillment of the tasks assigned to the exchange operating company under this federal act;

2. take appropriate precautions and install systems to identify all major operational risks and take effective measures to limit these risks;
3. take precautions for the sound management of the technical workflows of the system, including effective emergency measures in the event of a system failure;
4. to have transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders;
5. to have effective arrangements to facilitate the efficient and timely finalization of the transactions executed in its systems;
6. to have available, at the time of authorization and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed;
7. define measures that make it possible to check compliance with the admission requirements pursuant to § 39 to § 41 for the financial instruments it has admitted to trading;
8. install an internal audit department in the meaning of Article 24 Delegated Regulation (EU) 2017/565.

(2) A market operator shall not execute client orders against proprietary capital or engage in matched principal trading on any of the regulated markets they operate.

(3) The exchange operating companies are under the obligation to immediately notify the FMA in writing, and in the case of general commodities exchanges, the Federal Minister for Science, Research and Economy, of any changes regarding the person of a managing director as well as any other change of relevant circumstances for the license granted pursuant to § 4.

#### **Outsourcing of Tasks**

**§ 22** (1) The exchange operating company may only outsource the execution of one or more tasks to third parties (service providers), if the following conditions are met:

1. The exchange operating company notifies the FMA in writing, and in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy, of its intention to outsource services;
2. the license requirements pursuant to § 4 of this federal act must continue to be met;
3. the outsourcing is not permitted to result in the delegation of tasks of the managing directors;
4. the relationship and the duties of the exchange operating company with the exchange members, exchange traders and issuers must remain unchanged;
5. the outsourcing is not permitted to hinder in any way the effectiveness of the supervision of the exchange operating company and the surveillance of exchange trading;
6. taking into account the type of the task to be outsourced, the third party must have the required qualifications and must be able to carry out the task assigned;
7. the exchange operating company must be able to effectively supervise the third party at all times, to give further instructions and to terminate the outsourcing at any time with immediate effect;
8. adequate provisions must be made to avoid exposure to additional, unnecessary business risks.

Provided the exchange operating company and the third party belong to the same company group, it is possible to take into consideration the extent to which the exchange operating company controls the third party or can influence its actions.

(2) The assignment of tasks to third parties in the meaning of para 1 does not result in any restriction to the responsibility of the exchange operating company toward authorities.

(3) The following tasks of the operator of regulated markets are not permitted to be assigned to third parties:

1. trading surveillance and market control over the automated trading system;
2. admission, expulsion or suspension of exchange members and exchange traders;
3. trading surveillance tasks pursuant to § 7 to § 9;
4. receipt of ad hoc messages;
5. the admission and the withdrawal of admission of financial instruments pursuant to § 38 to § 40 and decisions in connection with trading halts.

(4) When entering into an agreement, executing or terminating an agreement on the assignment of tasks, the exchange operating company must act professionally and with due care; in particular, the distribution of the rights and duties must be clearly assigned between the exchange operating company and the third party in the form of a written agreement.

(5) Upon request, the exchange operating company must supply the supervisory authority with all information necessary to check if the requirements of this federal act regarding the outsourcing of tasks are complied with.

### **General Terms and Conditions of Business**

**§ 23** (1) The exchange operating company must draft general terms and conditions of business that must be approved by the FMA, this also applying to every amendment, and in the case of general commodity exchanges, by the Minister for Science, Research and Economy.

(2) The General Terms and Conditions of Business shall comprise

1. Rules regarding exchange membership,
2. Rules regarding trading hours;
3. Rules regarding the location of the exchange,
4. Trading rules pursuant to § 10,
5. Trading rules applicable for trading on the general commodity exchange,
6. the Official Bulletin of the exchange, in which all important facts regarding exchange trading shall be published.

(3) To become a member of the stock exchange, a company must first be admitted by the exchange operating company. Membership may not be restricted to companies with their registered office in Austria. The exchange operating company must define rules based on clear, non-discriminatory and objective criteria for admission to the exchange. The exchange operating company also decides on the expulsion of members.

(4) The exchange operating company may in individual cases define the starting and closing hours for exchange trading differently from those of the General Terms and Conditions of Business, or hold or cancel trading sessions if required by important circumstances in the interest of the public, or in order to guarantee proper trading on the exchange, or to protect persons interested in proper trading on the exchange, or if due to other important circumstances proper trading cannot be guaranteed.

(5) Trading hours and the location of the exchange for trading in foreign exchange may be fixed only after prior consultation with Oesterreichische Nationalbank.

(6) The exchange operating company shall issue a Schedule of Fees for the items listed below taking into account the general principles of sound business and bearing the interest in maintaining a functioning exchange for the benefit of the national economy in mind. The fees shall apply to

1. membership,
2. authorization of exchange traders,
3. the use of the exchange's infrastructure, especially the trading and settlement systems;
4. the admission to listing of negotiable instruments to trading on the exchange, and for the duration of the listing of negotiable instruments in accordance with § 24 paras 1, 5 to 7, and
5. the use of other services provided by the exchange.

### **Fees**

**§ 24** (1) The issuer shall pay the exchange operating company an admission fee and a fee for the duration of the exchange listing of transferable securities. These fees shall be fixed in a Schedule of Fees to be produced by the exchange operating company (§ 23 para 6) bearing in mind general business principles and the interests of the national economy in exchange trading set out in paras 2 to 4. The Schedule of Fees and amendments to it shall constitute General Terms and Conditions of Business; any claims to fees shall be done through regular legal action; the exchange operating company may make the admission to listing contingent on proof of payment of the fees. The Schedule of Fees shall not require approval pursuant to § 23 para 1.

(2) The exchange operating company must ensure that its fee structures including execution fees, ancillary fees and any rebates are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that can contribute to disorderly trading conditions or market abuse. In particular, member states shall require market making obligations for individual shares or a suitable basket of shares in exchange for any rebates granted.

(3) The exchange operating company may adjust its fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply.

(4) The exchange operating company may impose a higher fee for orders placed that are subsequently cancelled and may impose a higher fee on participants placing a high ratio of cancelled orders to executed orders and on participants operating high-frequency algorithmic trading in order to compensate the additional burden on system capacity.

(5) In the case of foreign issues and of debt securities not offered for subscription in Austria, the estimated circulation in Austria shall be used as a basis for calculations.

(6) In the case of no-par value shares, the fee shall be determined on the basis of the selling price or expected market value.

(7) No admission fees shall be charged for securities issued by the federal government.

#### **Requirements for the Managing Body of a Market Operator**

**§ 25.** (1) The managing body of a market operator pursuant to § 1 no 54 Securities Supervision Act 2018 must meet the following requirements:

1. The overall composition of the management body shall reflect an adequately broad range of experience;
2. The managing body shall possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks;
3. The managing body of a market operator defines and oversees the implementation of the governance arrangements that ensure effective and prudent management of an organization, including the segregation of duties in the organization and the prevention of conflicts of interests, and in a manner that promotes the integrity of the market;
4. The management body monitors and periodically assesses the effectiveness of the market operator's governance arrangements and takes appropriate steps to address any deficiencies.

(2) Members of the managing body shall, in particular, fulfil the following requirements:

1. They must have sufficient knowledge, capabilities and experience at all times to act with integrity, reliably and without prejudice when fulfilling their tasks and to be able to jointly understand the business activities of the respective market operators including the related risks to an extent that permits them to monitor and review the decisions of the management;
2. They must allot sufficient time to exercise their functions for the market operator, with the number of management activities that one member of a managing body within a legal entity can exercise being guided by the individual circumstances as well as the type, scope and complexity of the activities of the market operator;
3. They must have adequate access to information and documents which are needed for overseeing and monitoring management's decision-making;
4. Members of a managing body of a market operator who is of major significance due to its size, internal organization and the type of scope and complexity of the business are only permitted – unless they are on the managing body in the function of a representative of the Republic of Austria – to exercise one activity on the management body in conjunction with two activities as members of a supervisory board or a total of four activities as members of a supervisory board; the activities on the managing body or as a member of a supervisory board within the same company group or within one company in which the market operator has a qualified holding shall be deemed a single function. Activities on the managing body or as a member of a supervisory body at organizations that do not primarily pursue commercial interests are not to be included in the calculation of functions. The FMA may, upon request, approve the exceeding of this limit by one activity as a member of the supervisory board. The FMA must inform the ESMA of such approvals on a regular basis.

(3) The FMA shall refuse approval if it is not satisfied that the members of the managing body meet the requirements of para 2 nos 1 and 2 or if there are objective and demonstrable grounds for believing that the management body of the market operator may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

(4) The market operators must have sufficient personnel and financial resources to facilitate the training of the members of the managing body for their duties and to ensure their regular training.

(5) The market operator must notify the FMA of the names of all members of its managing body and every change to its composition as well as all further information necessary for reviewing requirements pursuant para 1 nos 1 and 2, para 2 nos 1, 2 and 4, para 4 and § 26.

#### **Nominations Committee**

**§ 26** Market operators which are significant in terms of their size, internal organization and the nature, scope and complexity of their activities must establish a nominations committee. The nominations committee must meet the following requirements:

1. It must consist of members of the supervisory board;
2. Search for candidates to fill open positions on the managing body and make the relevant proposals to the managing body;
3. If defined by law for the respective legal form of the market operator, provide support to the managing body for the preparation of proposals to the general shareholders' meeting to fill open positions on the managing body;

4. Within the scope of its tasks pursuant to nos 2 and 3, it must take into account the balance and diversity of the knowledge, capability and experience of all members of the concerned managing body, it must prepare a description of the tasks with a job profile and must indicate the time required for the tasks;
5. Within the scope of its tasks pursuant to nos 2 and 3, it must define a target for the ratio of the underrepresented gender on the managing body and develop a strategy to achieve this target;
6. Within the scope of its tasks pursuant to nos 2 and 3, it must ensure that decision-making by the managing body is not dominated by any individual or small group of persons in such a way so as to contradict the interests of the market operator;
7. Conduct regular assessments – but at least once annually or when events indicate the necessity of a reassessment – of the structure, size, composition and performance of the managing body and, if necessary, submit proposals for changes;
8. Conduct regular assessments – but at least once annually or when events indicate the necessity of a reassessment – of the knowledge, capabilities and experience of both the individual managing directors as well as of the managing body in its entirety and to inform the managing body of its findings;
9. Review the strategy of the managing body with respect to the selection and appointment of the managing directors and make recommendations to the managing body.

When performing its duties, the nomination committee shall be able to use any resources it deems appropriate, including external advice.

#### **Presentation of the Annual Financial Statements**

**§ 27** (1) The audited financial statements, the management report, the consolidated financial statements and the consolidated management report as well as the audit report regarding the financial statements, the management report, the consolidated financial statements and the consolidated management report must be submitted by the exchange operating company to the FMA at the latest within six months of the close of the financial year; however, in the case of general commodity exchanges, to the Federal Minister for Science, Research and Economy.

(2) The auditor must examine the financial statements of the exchange operating company, its bookkeeping and shall examine the functional capacity of the computer system as to whether its technical installations are suitable for ensuring adequate surveillance within the meaning of § 7 para 2 and, in particular, for allowing the required investigations pursuant to § 7 para 2. The results of the audit must be included in the auditor's written report.

(3) The examination by the auditor shall also include a review of compliance with the stipulations of this federal law and the result of the examination shall be included in the audit report. § 93 Securities Supervision Act 2018 shall apply to the auditor.

(4) Exchange operating companies shall be deemed companies that serve the public interest as defined in § 189a no 1 Business Code.

#### **Exchange Members**

**§ 28** (1) Membership in the exchange may only be granted if

1. no facts are known that may indicate that the applicant is not as reliable as is required to be able to take part in trading on the exchange;
2. the applicant is not restricted in its capacity to do business, in particular, due to insolvency or because it has been put under receivership;
3. the applicant or one of its officers has not been convicted by law for an offense pursuant to § 13 Trade Code 1994 as long as such sentence has not been abrogated or is not subject to restricted divulgence from the penal record,
4. the applicant or one of its officers has not been convicted by law pursuant to § 105 to § 108, § 154 to § 156, § 163 and § 164 unless such violation of § 52, § 154 or § 155 is minor or the sentence has been abrogated, and
5. no facts are known that would be detrimental to the reputation of the domestic market or hinder the maintenance of orderly and fair trading.

(2) Membership in the exchange is obtained by entering into an agreement with the exchange operating company. If the legal requirements are met, the exchange operating company is under the obligation to contract except in cases in which the membership applicant refers to the membership requirements of § 29 para 1 nos 3, 4 or 6 and has its registered office in a third country.

(3) In the case of applicants for membership having their registered office in an EEA member state or in a third country, membership in the respective domestic exchange shall suffice as a proof that the conditions listed in para 1 are met, if the fulfillment of these or comparable conditions is a compulsory prerequisite for exchange membership on the home exchange. Admission as a member to the exchange shall not be possible if the applicant has been convicted by final judgement in his/her home country

unless the sentence has already been abrogated and is subject to restricted divulgence from the penal record and the offense on which the sentence was passed is considered equivalent to the facts of a case under the provisions listed in para 1 nos 3 and 4.

(4) The exchange operating company shall regularly send the FMA a list of trading members on the regulated markets it operates and maintain this list on a medium accessible by the general public; this list shall be updated regularly.

(5) The exchange operating company shall be authorized to process personal data in the meaning of Regulation (EU) 2016/679 insofar as this is necessary for carrying out its tasks as set out in this federal act.

(6) The exchange operating company shall maintain a list of trading members, and of settlement and clearing members on the regulated markets it operates on a medium accessible by the general public; this list shall be updated regularly.

**§ 29** (1) Membership in a securities exchange entitles a member to take part in trading on one or more regulated markets, MTF and OTF operated by the exchange operating company, and in trading in foreign tender, coins and precious metals as well as to participate in settlement and clearing.

The following entities may become members of a securities exchange:

1. Credit institutions and CRR credit institutions pursuant § 1 and § 1a no 1 Banking Act that are licensed to exercise one of the business activities pursuant to § 1 para 1 nos 7 and 7a Banking Act;
2. Credit institutions, investment firms from member states and local firms from member states,
  - a) who are licensed in their home member state to provide services according to Section A Nos 1 to 3 of the Annex to Directive 2014/65/EU or pursuant to Article 4 (1) No 4 of Regulation (EU) 575/2013,
  - b) that comply with the capital requirements according to Regulation (EU) No 575/2013 and – unless the respective company is a local firm – are subject to supervision by the competent authorities of the home member state with respect to these regulations, and
  - c) for whom the notification by the competent authority of the home member state of the credit institution pursuant to § 9 para 2 or 6 Banking Act or of the investment firm pursuant to § 17 Securities Supervision Act 2018 has been made; in the case of local firms, a confirmation of the competent authority of the home member state or any other evidence which certifies compliance with the provisions pursuant to Article 30 of Council Directive 2013/36/EU shall be considered sufficient;
3. recognized investment firms in third countries pursuant to Article 4 (1) No 25 of Regulation (EU) No 575/2013;
4. companies with their registered office in a third country (§ 2 no 8 Banking Act) that are licensed to carry out at least one of the businesses pursuant to § 1 para 1 no 7 lit b to f and no 7a Banking Act;
5. recognized clearing agents pursuant to § 2 no 33 Banking Act provided that these also include organizations that carry out trades in one or more financial instruments in the meaning of § 1 no 7 Securities Supervision Act 2018 and enter into these trades themselves as counterparties on the condition they have their registered office or admission in an EEA member state and take part exclusively in clearing and settlement;
6. companies that are licensed to trade for their own account or on behalf of third parties in derivative contracts pursuant to § 1 no 7 lit e to g and j Securities Supervision Act 2018, even if their license is not based on the Banking Act.

(2) A license restricted to the foreign exchange and the foreign currency business shall only authorize the company to participate in trading in foreign tender.

(3) Membership in a securities exchange shall only be granted if the applicant's technical facilities for participating in the trading and settlement system ensure that it will not hinder disruption-free trading and/or settlement on the respective market. Upon admission, a member shall immediately

1. join an existing trading and an existing settlement system or a suitable settlement and clearing system pursuant to § 30 and deposit the respective collateral and security deposits;
2. when participating in trading appoint at least one exchange trader who takes part in trading.

(4) Recognized investment firms and other firms with their registered office in a third country that are not represented in the Basel Committee for Banking Supervision may retain their membership in a securities exchange only as long as at least one authorized clearing member (Article 300 No 3 Regulation (EU) No 575/2013) is represented on the derivatives market, and at least one authorized credit institution is represented on the cash market that has its registered office and is licensed in a member state or in a third country represented on the Basel Committee for Banking Supervision, and is a member of the domestic securities exchange and enters into trades on behalf of the recognized investment firm or of the company on the domestic exchange and guarantees their fulfillment.

(5) The exchange operating company may enter into cooperation agreements with other operators of recognized exchanges pursuant to § Article 4 (1) No 72 Regulation (EU) No 575/2013 as well as with the operators of equivalent markets with their registered office in third countries. In this case, operators of equivalent markets with their registered office in a third country must meet the requirements applicable to regulated markets. Cooperation agreements may regulate the following

1. Members of an exchange or a regulated market may become members of a host exchange or a host market granting them the same status they enjoy at their home exchange or home market, which means that they may become members of the domestic securities exchange with a comparable scope starting on the effective date agreed in the cooperation contract under the same conditions agreed in said contract;
2. if the agreement relates to the cash market regarding no 1, an authorized credit institution with its registered office and license in an EEA member state shall guarantee the fulfillment of transactions to the exchange operating company concluded on a domestic exchange by all or individual exchange members or market members;
3. if the agreement relates to the derivatives market regarding no 1, an authorized clearing participant with its registered office and license in a member state may enter into the obligation to fulfill all transactions executed on a domestic exchange on behalf of all or individual exchange members or market members;

The requirement stated in nos 2 and 3 may be waived or lowered if the clearing and settlement of exchange transactions is guaranteed by other means. Furthermore, a contract may be concluded stating that the technical and legal terms of the cooperation exchange must be comparable to the standards of the exchange operating company, which may apply as supplemental membership requirements on the domestic exchange in addition to regulations of the home exchange or home market.

(6) The exchange operating company and the recognized clearing agent may agree under a cooperation agreement that the clearing agent may take part in the settlement of exchange transactions concluded on the securities exchange by becoming a member of the settlement and clearing system. The clearing agent, as a member of the settlement and clearing system, shall be entitled to enter into the exchange transactions concluded by its members through the exchange, and to settle and clear these.

(7) The exchange operating company shall define in its General Terms and Conditions of Business (§ 23) the obligations of the members of the securities exchange under the rules and procedures for the clearing and settlement of transactions concluded on this market. The exchange operating company shall offer membership in the clearing and settlement system under equal conditions to all members and may not make any differentiation by place of the registered office of member.

(8) If an exchange operating company intends to make available in another member state a system for the remote access of members to one of its regulated markets, the exchange operating company shall notify the FMA of this intention. The FMA shall forward this information within one month to the competent authority of the member state in which the exchange operating company intends to make such operating system available. Upon request of the competent authority of the host member state, the FMA must inform this authority within a reasonable period of time of the names of the members of the regulated market concerned. The exchange operating company shall immediately make available an updated list of members to the FMA upon its request.

(9) If the operator of a regulated market with its registered office in another member state intends to make available a system in the meaning of para 8 within the country, the FMA may request the competent authority of the home member state to send the names of the members of the concerned regulated market.

(10) In the case of exchange members that do not have a domestic office for acceptance of delivery of official mail and do not have any domestic person authorized to accept official mail, it is permitted to make the delivery without proof of delivery received by sending documents to a delivery address known to the authority. A document sent shall be deemed delivered two weeks after being handed over to the domestic office for acceptance of delivery of official mail.

**§ 30** (1) The exchange operating company shall grant all members the right to choose a settlement and clearing system through which transactions in financial instruments concluded on one of the regulated markets operated by the concerned exchange operating company can be settled and cleared provided that

1. such links and arrangements between the designated settlement system and any other system or facility as are necessary exist to ensure the efficient and economic settlement of the transaction in question; and
2. the technical requirements for the settlement of transactions concluded on the regulated market via a settlement system other than the one selected by the regulated market enable the smooth and orderly functioning of the financial markets.



(2) Para 1 does not affect the right of the operator of a central counterparty, clearing or securities settlement systems to refuse to provide the requested services for well-founded reasons.

(3) Paras 1 and 2 apply irrespective of Title III, IV and V of Regulation (EU) No 648/2012.

**§ 31** Exchange members that conclude transactions on a regulated market are not under the obligation to comply with § 47 to § 65 Securities Supervision Act 2018; this shall not apply if the exchange members execute orders on behalf of customers on a regulated market.

**§ 32** Membership in a commodity exchange is restricted to

1. persons who are professionally engaged in the production, sale or processing of goods that are admitted to the exchange and tradable on it;
2. persons who use goods in their enterprise admitted to the exchange and tradable on it, or
3. persons who are engaged in auxiliary business dealings connected to the goods admitted to the exchange and tradable on it.

(2) Upon being accepted, members of the commodity exchange must either appoint themselves, a member of the management or an employee of the company, as a trader to the exchange.

**§ 33** The exchange members are under the obligation to

1. comply with the terms and conditions of business of the exchange operating company in their conduct of business, to act with the conscientiousness of a proper businessperson and to avoid any activities that might be damaging to the reputation of the exchange;
2. pay all defined stock exchange fees and any other dues in a timely manner;
3. when participating in trading appoint at least one exchange trader (§35 and §36) to take part in trading.
4. maintain the prescribed collateral and deposits in the stipulated minimum amount as specified for the trading and clearing system;
5. as a member of a securities exchange, take the measures within its enterprise as stated in § 119 para 4 nos 1 to 3 for the prevention of inside dealings.

**§ 34** (1) Members shall be expelled in the following cases

1. if they do not meet the admission requirements at the time of admission or if they cease to meet them at a later time,
2. if they fail to fulfill their duties.

(2) The exchange operating company shall have the right to suspend membership for the period of time required to determine whether or not grounds for expulsion of the member under investigation are given. The expulsion of a member is done by means of a declaration of expulsion issued by the exchange operating company. Action on the grounds of interference with possession or a motion for an injunction pursuant to the Rules of Execution, Imperial Law Gazette No 79/1896 based on measures taken by the exchange operating company in connection with the expulsion from membership shall not be permissible. The same shall apply with regard to orders issued by the exchange operating company pursuant to paras 3 and 4.

(3) If the reasons pursuant to para 1 no 2 are of a temporary or curable nature and if the clearing member is not grossly at fault, instead of expulsion, membership may be declared suspended for as long as such reasons persist.

(4) Should a member of a stock exchange no longer fulfill the requirements stated in § 29 para 3 regarding its technical installations, then given the prerequisites under para 3, the Member shall be banned from stock exchange trading within the trading system for the duration of the disruption. The right to trade on the stock exchange trading floor as well as all other rights of members shall not be affected by this order. However, should the requirements pursuant to § 29 para 3 not be fulfilled within a period of grace set by the exchange operating company, the measures pursuant to para 1 shall be taken.

### **Exchange Traders**

**§ 35** (1) The right to trade on the exchange shall be obtained by entering into an agreement with the exchange operating company. If the applicant fulfills the legal conditions, the exchange operating company shall be under obligation to contract.

(2) Only the following persons are permitted to be admitted as exchange traders pursuant to § 1 no 20:

1. a person who is a member of the exchange and a physical person,
2. a person who either belongs to the management of one of the exchange members, or
3. a person who is employed by an exchange member, and
4. persons who work for the account of the exchange member under another type of legal contractual relationship and are subject to its instructions and for whom the exchange member is liable in the same way as for its employees.

**§ 36** (1) The admission as a trader to the exchange may only be granted to persons named in § 35 para 2 provided none of the grounds for expulsion named in § 28 applies to them. The admission as a trader to the exchange shall only be granted to persons stated in § 35 para 2 nos 1, 3 and 4 provided these persons have the experience and qualifications to participate in stock exchange trading without causing disruptions to trading.

(2) Traders are obliged to comply with the provisions of § 33 no 1 when trading on the exchange.

(3) The provisions of § 34 paras 1 to 3 regarding the grounds for expulsion and suspension also apply to traders.

### **Subsection 3**

#### **Admission and Trading on the Securities Exchange**

##### **Special Provisions for the Vienna Stock Exchange**

**§ 37.** (1) The Vienna Stock Exchange is a stock exchange and at the same time a general commodity exchange.

(2) The license to operate and manage the Vienna Stock Exchange pursuant to § 3 shall be issued by the FMA in agreement with the Federal Minister for Science, Research and Economy.

(3) The FMA in agreement with the Federal Minister of Science, Research and Economy shall be responsible for notices, measures and authorizations pursuant to § 48 and § 58 regarding the exchange operating company's tasks of managing and operating the Vienna Stock Exchange.

##### **Admission Procedure and Rescission Procedure for the Official Market**

**§ 38** (1) The exchange operating company decides on applications for the admission to listing of securities and of issuing programs that include the issuance of non-dividend paying securities on the Official Market as well as applications for rescission of admission to the Official Market.

(2) An appeal may be lodged with the Federal Administrative Court in objection to

1. the denial of admission to listing,
2. the rescission of admission to listing (para 4).
3. the rejection of rescission of admission to listing (para 6).

(3) The admission to listing shall be denied if the requirements are not met pursuant to para 5, § 40 to § 42, § 45, § 57 and § 119 para 4.

(4) The exchange operating company shall rescind admission to listing if a requirement for admission pursuant to para 3 ceases to be given at a later time, if admission was obtained by giving incorrect information or by fraudulent actions or in any other way obtained by deceit or if the issuer fails to meet its obligations pursuant to § 1, § 2 para 2, § 24 paras 1 and 5 to 7, § 119 to § 126, § 130 to § 135 and § 140. If the protection of investors is not prejudiced, the issuer may, in the event that the admission requirements were no longer fulfilled at a later time or in the case of breach of duty by the issuer, be requested to reinstate the former legal status, with an appropriate extension of the period of time being granted; the admission shall be rescinded if, after the extension of the period of time expires, the request has not been complied with.

(5) It shall not be permitted to admit securities which are not securitized in the form of a global certificate deposited with a central depository or registered with a central depository.

(6) The admission of financial instruments to the Official Market will be rescinded upon request of the issuer provided investor protection is not at risk. The application is only permitted if at the time of application, the official listing of the financial instruments had existed for at least three years. In the case para 8 no 2, the period is one year.

(7) The issuer is permitted to file the application pursuant to para 6 for rescission of admission of equities pursuant to § 1 no 4 of the Takeover Act, Federal Law Gazette I no 127/1998 only if the general shareholders' meeting, with a majority vote that includes at least three quarters of the votes cast, passes the corresponding resolution or if the shareholders holding at least three quarters of the share capital with voting rights demand it; the fulfillment of this requirement must be confirmed by a notary (§ 89c Act on Notaries – Imperial Law Gazette No 75/1871).

(8) In the cases of para 7, investor protection is not at risk if, at the time the application is submitted, it is proven that either

1. within the last six months, a bid offer was published pursuant to Part 5 of the Takeover Act, or
2. trading in equities is guaranteed on at least one regulated market in an EEA member state after the rescission of admission to listing takes effect on which the same admission requirements apply for rescission of admission to trading on this market.

(9) Proof must be furnished to the exchange operating company that the requirements of paras 5 to 8 are met.

(10) The exchange operating company must immediately publish the rescission of admission on its website and defines as of when the rescission takes effect, taking into account the interests of the issuers and of investors. The period from the time of publication and the entry into force of the rescission is not permitted to be shorter than three months and no longer than 12 months. The publication of the rescission of admission must be done immediately also by the issuer on its website.

#### **General Admission Requirements for the Regulated Market**

**§ 39** (1) Trading in financial instruments on a regulated market shall require the admission to listing by the exchange operating company. The admission to listing shall be granted if the financial instruments can be traded in a fair, orderly and efficient manner and these – in the case of transferable securities – are freely tradable. If admission to official listing is applied for, the requirements pursuant to § 40 and § 41 apply.

(2) When assessing if transferable securities pursuant to § 1 no 5 Securities Supervision Act 2018 or investment fund shares pursuant to § 3 para 2 no 30 Investment Fund Act 2011, Federal Law Gazette I no 77/2011 can be traded fairly, in an orderly manner and efficiently, the exchange operating company must take into account Article 35 (4) and (6) or Article 36 (1), (3) and (4) of Regulation (EC) No 1287/2006.

(3) A transferable security shall be deemed transferable if the requirements pursuant to Article 35 paras 1 to 3 or para 5 of Regulation (EC) No 1287/2006 are met.

(4) When admitting derivatives to trading pursuant to § 1 no 7 lit d to j Securities Supervision Act 2018, Article 37 of Regulation (EC) No 1287/2006 shall apply.

(5) Transferable securities may also be admitted to trading on a regulated market by the exchange operating company without the consent of the issuer if these securities have already been admitted to one of the following regulated markets:

1. to a securities exchange;
2. to a regulated market in another member state, or
3. to an equivalent market in a third country provided the requirements for admission to listing of securities are comparable to the corresponding provisions of Directive 2014/65/EU and the legal provisions in the third country regarding the preparation of a listing prospectus for a public offering of securities or for the admission to trading are comparable to those of Regulation (EU) 2017/1129.

The exchange operating company shall inform the respective issuer and the FMA of the admission to trading of transferable securities and shall announce the admission on its website.

(6) In the case of para 5, the issuer shall not be under the obligation to send the information that must be published under this federal act to the exchange operating company that has admitted the transferable securities to trading without its consent.

(7) Irrespective of § 45, the exchange operating company shall install permanent effective organizational procedures to check if an issuer of transferable securities that has been admitted to trading on a regulated market it operates complies with the disclosure requirements of this federal act. The exchange operating company shall take measures to facilitate access for its members to such information disclosed.

(8) The exchange operating company shall rescind the admission to trading of a financial instrument irrespective of § 93 para 2 no 12 Securities Supervision Act if the requirements pursuant to paras 1 to 4 are no longer met. The rescission of admission to listing is subject to § 38 para 4. If the admission to trading is rescinded, the exchange operating company shall disclose its decision in a medium accessible to the public and notify the FMA of the rescission of the admission; the exchange operating company shall send all relevant information on the case to the FMA. The FMA shall inform the competent authorities of other member states of the rescission of admission to trading. Additionally, the exchange operating company may inform the operators of other regulated markets directly of the rescission of admission to trading in the concerned financial instrument.

(9) If the FMA gains knowledge of reasons that would justify the rescission of admission of a financial instrument to the Official market or to another domestic regulated market, then it shall inform the exchange operating company of this and charge it with the task of examining the reasons given for the rescission and to immediately disclose this decision on its website. Should the exchange operating company arrive at the conclusion in the course of this examination that there are grounds for rescission, para 8 shall apply.

(10) Should the FMA receive information from the competent authority of another member state that could result in the rescission of admission to trading of a financial instrument on a domestic regulated market, the FMA shall immediately inform the exchange operating company of this fact. The exchange operating company shall inform the FMA of any proceedings it initiates pursuant to § 38 para 4.

### Admission Requirements for the Official Market

**§ 40** (1) The requirements for the admission to listing of securities and issuing programs to the Official Market are:

1. The establishment and the bylaws or articles of association of the issuer must comply with the laws of the country in which the issuer has its registered office.
2. The total nominal value of the securities for which admission to listing is being requested shall be at least one million euro, and for other securities at least EUR 250,000. In the case of securities that are not denominated in a monetary amount, the issuer shall confirm that the probable price will be at least EUR 250,000; the total number of share certificates of such securities must be at least 10,000. In the case of convertible bonds subject to mandatory conversion pursuant to § 26 Banking Act or instruments without voting rights pursuant to § 26a Banking Act or non-voting preference shares of Austrian joint stock companies whose ordinary shares are not admitted to listing on the Official Market, the nominal value of such securities must be one million euro.
3. An initial admission to listing of shares requires the stock corporation to have existed for at least three years and the financial statements for the three full financial years preceding the application must have been published in accordance with applicable law; if the stock corporation is a universal successor of another company and there is accounting continuity, the period of existence of this other company shall be credited to the period of existence of three years. An exemption from the requirement of a three-year period of existence may be granted in special cases if such exemption is in the interest of the company or of the general public. The joint stock company must have in any case published financial statements for one full financial year.
4. The issuer must have complied with the provisions of the federal acts and laws of the provincial governments applicable to the issuance of the securities as well as with the decrees and official notices based on such legislation; this applies also to foreign legislation of the country in which the securities have been issued. If the securities need to be registered in a public register, the completion of registration must be proven to the exchange operating company before the start of trading.
5. The denomination of the shares and other equities must meet the requirements of trading and of investors.
6. The application for admission to listing must refer to all shares already issued of the same category or to all securities of the same issue; however, shares that cannot be traded for a certain period of time due to applicable legislation may be exempt from the admission, if such exemption does not entail disadvantages for the bearers of the admitted shares and this exemption is pointed out in the listing prospectus or the official notice promulgating the admission to listing.
7. Shares and other equity securities shall have adequate amount of free float. If this is to be achieved through the exchange listing, the necessary number for trading on the exchange must be available. Sufficient free float of shares shall be deemed given if either 25% of the total nominal value, or in the case of no-par value shares, 25% of the total number of shares to be admitted has been acquired by the public or if due to the large number of shares of the same class and their broad free float it is believed that orderly trading can be guaranteed. Orderly trading is guaranteed if at least 10% of the total nominal value of the shares, or in the case of no-par value shares, 10% of the number of shares are held by at least 50 different shareholders. The credibility of this requirement must be accordingly presented by the issuer at the time of admission. If the minimum threshold mentioned fails to be complied with at a later time, this shall not be detrimental to admission as long as the level does not drop below the minimum threshold of 2%.
8. Securities that grant holders the right to convert or subscribe to other securities having a minimum denomination is less than EUR 50,000, the securities to which the right of conversion or subscription refers must be admitted to listing for exchange trading by the latest simultaneously; this requirements may be waived if the issuer furnishes proof that the bearers of the securities that grant them the right to conversion or subscription with a minimum denomination of less than EUR 50,000 have all the information at their disposal that they need to reach an informed judgment on the value of the securities to which the right of conversion or subscription refers; this shall be assumed, above all, if the securities to which the right to conversion or subscription refers are officially listed on an internationally recognized securities exchange and the listing prospectus for the admission of the securities with conversion or subscription rights meets the requirements of Article 6 of Regulation (EU) 2017/1129.

(2) As regards the admission to listing of shares that have already been admitted to official listing on one or several other foreign exchanges and for which a sufficient volume of free float is given outside of Austria, the requirement under para 1 no 7 shall not apply.

(3) As regards the enlargement of the admission to listing to other securities of the same class, the requirements of para 1 no 2 and 7 shall not apply.

**§ 41** (1) As regards the admission of debt securities that are issued continuously without any restriction to a defined subscription period or to a certain maximum amount, the limitation pursuant to § 40 para 1 no 2 shall not apply.

(2) Debt securities of an international organization which is an entity under public law must be tradable without any restrictions in order to be admitted to listing on the Official Market and the application for admission to listing must refer to all debt securities of an issue. Debt securities issued by the federal government, the provinces and the member states of the EEA shall be admitted to official listing on all securities exchanges.

(3) Certificates that represent shares may be admitted to listing if

1. the issuer of the shares represented meets the requirements pursuant to § 40 para 1 nos 1 to 3,
2. the certificates meet the requirements pursuant to § 40 para 1 nos 4 to 8, and
3. the issuer of the certificates guarantees the fulfillment of its obligations vis-à-vis the bearers of the certificates.

(4) Non-dividend bearing securities issued within the scope of an issuing program admitted to listing on the Official Market within 12 months as of the publication of the prospectus shall not require a separate admission procedure. Official listing shall be granted provided the conditions of § 40 para 1 nos 2 and 4 to 8 are met and after the applicant has handed over the terms of issue to the exchange operating company.

#### **Application for Admission to Listing**

**§ 42** (1) Applications for admission to listing of a security or of an issuing program on the Official Market must be made in writing to the exchange operating company by the issuer and must be signed by an exchange member if the issuer is not a member of the exchange concerned.

(2) The application must contain the address of the registered office and name the applying issuer, the type and denomination of the securities as well as the total amount of the issue to be admitted by indicating the nominal value, or, if this is not available, the probable price and number of shares. Furthermore, the exchanges must be named at which an application for admission to listing is being submitted at the same time or was submitted within the last 30 days or is to be submitted in the near future. In the case of an application for admission to listing of an issuing program, the total amount of the maximum issuing volume stated in the listing prospectus shall refer to all potential non-dividend paying securities. Should more than 12 months have passed since the publication of the listing prospectus or the issue of non-dividend paying securities exceed the total amount of the program applied for, a new application must be submitted.

(3) The application shall be accompanied by the following documents:

1. An excerpt from the Companies Register in which the issuer is registered that is not older than four weeks;
2. a valid copy of the articles of association of the issuer;
3. any official authorization certificates if such are required for the establishment of the issuer's company, the pursuit of its business activities or the issuance of securities;
4. proof of any other legal requirements for the issue of securities;
5. any proof of registration of the issue in a register if this is required for the issue to be legally valid;
6. a) if shares are to be admitted for the first time to listing on the Official Market, the financial statements with the audit opinion and the reports of the management board for the last three full business years; if the issuer has not existed in this legal form in the preceding three full business years, then proof shall be supplied that it is the universal successor and that the accounting is continuous, in particular, it shall furnish the relevant company transformation reports and audits;  
b) in all other cases, the annual accounts with the audit opinion and reports of the management board for the last full business year;
7. the prospectus approved pursuant to § 46 or otherwise a prospectus approved pursuant to Directive 2003/71/EC including a confirmation by the FMA of having received the notification pursuant to Art. 24 et seq of Regulation (EU) 2017/1129;
8. if the securities or certificates seeking admission are to be securitized by a global certificate, a declaration of the issuer indicating at which central securities depository pursuant to § 1 para 3 of the Securities Depository Act the global certificate shall be held in safekeeping.

(4) The exchange operating company must reach a decision on applications pursuant to para 1 within ten weeks of receipt. However, this period shall not include any time consumed for gathering information from the issuer pursuant to § 45 para 1, or for publishing this information pursuant to § 45

para 2 or caused by the need to remedy irregularities of form pursuant to § 13 para 3 General Law on Administrative Procedure (AVG) 1991.

#### **Application for the Rescission of Admission**

**§ 43** (1) The application for rescission of admission to listing of a financial instrument to the Official Market must be submitted in writing to the exchange operating company by the issuer.

(2) The application must state the address of the registered office and the name of the company of the issuer submitting the application as well as the exact designation of the securities.

(3) The application shall be accompanied by the following documents:

1. An excerpt from the Companies Register in which the issuer is registered that is not older than four weeks;
2. A valid copy of the articles of association of the issuer;
3. Proof of the permits required pursuant to § 38 para 6 to 11 regarding the company law requirements and compliance with investor protection laws;

(4) The exchange operating company must reach a decision on applications pursuant to para 1 within ten weeks of receipt. However, this period shall not include any time consumed for gathering information from the issuer pursuant to § 45 para 1, or for publishing this information pursuant to § 45 para 2 or caused by the need to remedy irregularities of form pursuant to § 13 para 3 General Law on Administrative Procedure (AVG) 1991.

#### **Derivatives Contracts**

**§ 44** (1) If an exchange member submits an application for admission to listing for derivatives contracts pursuant to § 1 no 7 lit d to j Securities Supervision Act 2018, § 42 shall apply accordingly.

(2) The provisions of § 53 to § 56 and of § 10 Capital Market Act shall apply to announcements of new listings on the exchange, price determination and the publication of prices.

#### **Obligation of the Issuer to Provide Information**

**§ 45** (1) The issuer submitting the application has the obligation to give the exchange operating company any information that might be necessary to determine if the conditions for admission or for rescission of the admission to trading on the exchange pursuant to § 38 para 6 are given.

(2) In the case of applications for the admission to listing or the rescission of the admission to the regulated market pursuant to § 38 para 6, the exchange operating company may instruct the issuer to make disclosures pursuant to para 1 and define a reasonable period of time for such disclosures. If the issuer does not comply with this order and this violates investor protection, admission to trading shall not be granted.

#### **Prospectus for the Admission to Listing on the Exchange**

**§ 46** The listing prospectus must be prepared in accordance with the provisions of Regulation (EU) 2017/1129 irrespective of Article 24 et seq of Regulation (EU) 2017/1129 and must be approved by the Financial Market Authority (FMA) pursuant to Article 20 of Regulation (EU) 2017/1129. A prospectus prepared pursuant to § 12 para 3, first sentence, Capital Market Act 2019 (Federal Law Gazette I No 62/2019) and approved by the FMA does not grant admission to listing on the stock exchange.

#### **§ 47**

Repealed by FLG I No 62 of 22 July 2019

#### **Equity Investments**

**§ 48** (1) Any person intending to hold, either directly or indirectly, a qualified interest in an exchange operating company, shall notify the Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy in advance of this intention in writing stating the amount of the stake. This shall not apply in cases in which the qualified interest will be held through an exchange operating company subject to the obligation to obtain a license pursuant to § 58 para 1 no 4.

(2) Any entity or person intending to increase a qualified interest in an exchange operating company to an extent so as to reach or exceed the limits of 20 percent, 33 percent or 50 percent of the voting rights or the capital of the company, or to the extent that the exchange operating company becomes the respective person's or entity's subsidiary, shall give prior written notification of this intention to the FMA, or, in the case of general commodity exchanges, to the Federal Minister for Science, Research and Economy.

(3) The FMA, or, in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy shall prohibit the intended acquisition of shares if the requirements stated in § 4 para 1 nos 3 to 5 are not met within a period of three months following the notification pursuant to para 1 or 2. If the acquisition of shares is to be permitted, the FMA, and, in the case of general commodity

exchanges, the Federal Minister for Science, Research and Economy, may prescribe a deadline for the realization of the intentions stated in paras 1 and 2.

(4) The duty of notification pursuant to paras 1 and 2 shall apply equally to an intended divestiture of a qualified interest and to cases in which the shares held in an exchange operating company fall below the limits stated in para 2 for investments in an exchange operating company.

(5) Exchange operating companies shall immediately notify the FMA, or, in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy in writing of any acquisition or divestiture of shares, of any stakes held that reach, exceed or fall below the shareholding limits within the meaning of paras 1, 2 and 4 as soon as they gain knowledge of such fact. Moreover, exchange operating companies shall at least once annually inform the FMA, or, in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy in writing of the names and addresses of shareholders that hold a qualified interest in the company as well as of the size of the stakes held, this refers in particular to information obtained at annual shareholders' meetings or information obtained pursuant to § 130 through § 136. Pursuant to this paragraph, exchange operating companies are under the obligation to publish the information required to be notified to the FMA, and in the case of general commodities exchanges to the Federal Minister for Science, Research and Economy in media available to the general public.

(6) Persons/entities in a position to exercise, directly or indirectly, significant influence over the management of the regulated market must have the required capability.

(7) In the event the influence exerted by the holder of a qualified interest is not in agreement with the requirements of a sound and prudent conduct of an exchange operating company, the FMA, or, in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy, shall take the measures required to ward off this danger or to end the situation. Such measures may be:

1. measures within the meaning of § 93 para 7, or
2. a court order to suspend the voting rights of the shares held by the respective shareholders with the court having original jurisdiction in commercial matters in the area in which the respective exchange operating company has its registered office,
  - a) for as long as the danger continues to exist, with the court determining when such danger has ceased to exist, or
  - b) until these shares are acquired by third parties if not prohibited pursuant to para 3;The court reaches decisions within the scope of non-contentious legal proceedings.

(8) The FMA, or, in the case of general commodity exchanges, the Federal Minister for Science, Research and Economy, shall take adequate measures against the persons named in paras 1 and 2 if they fail to comply with their duty of prior notification, or acquire an interest in defiance of the prohibition pursuant to para 3 or without an authorization pursuant to § 58 para 1. The voting rights of the shares held by the respective shareholders shall remain suspended until

1. the FMA, or, in the case of a general commodity exchange, the Federal Minister for Science, Research and Economy, determines that the acquisition of the shares would not have been prohibited pursuant to para 3, or
2. the FMA, or, in the case of a general commodity exchange, the Federal Minister for Science, Research and Economy, determines that the grounds for prohibiting the acquisition no longer exist, or

(9) Should a court decree the suspension of the voting rights pursuant to para 7, the court shall concurrently appoint a fiduciary who complies with the requirements of § 4 para 1 no 3 and shall confer to this fiduciary the right to exercise the voting rights. Should para 8 be applicable, the FMA, or, in the case of a general commodity exchange, the Federal Minister for Science, Research and Economy, shall, upon receipt of the notification regarding the suspension of the voting rights, immediately apply for the appointment of a fiduciary with the competent court pursuant to para 7. The fiduciary shall be entitled to reimbursement of expenses incurred and to remuneration for the work performed, the amount of which shall be determined by the court. The exchange operating company and the respective shareholders and other owners of shares shall be jointly and severally liable for such expenses. The obligors shall have the right of recourse against decisions determining the amount of remuneration and reimbursed expenses due to the fiduciary. No further legal action shall be permitted against rulings by the court of appeals.

(10) Paras 1 to 4 and paras 5 first sentence shall not apply where the procedures within the meaning of paras 1 and 2 pursuant to § 58 paragraph 1 require authorization.

#### **Realization of Collateral and Deposits**

**§ 49.** The collateral deposited within framework of the trading system shall be realized by the clearing agent established for this purpose in accordance with the principles of realization of commercial executors. In case of bankruptcy, the clearing agent is obliged to give information only if requested by

the receiver administrating the estate in bankruptcy (§ 120 para 4, Bankruptcy Act - Imperial Law Gazette no 337/1914).

#### **Exchange transactions**

**§ 50.** (1) A transaction shall be deemed an exchange trade if it has been executed on the stock exchange during exchange trading hours in accordance with the General Terms and Conditions of Business applicable to such negotiable instruments admitted to trading on the concerned stock exchange.

(2) When there is an automated trading system on an exchange, all trades are considered exchange transactions that are executed in negotiable instruments included in the automated trading system.

(3) Exchange transactions are transactions for delivery at a fixed time; any claims for their effective fulfillment must be presented within one week after the due date to a court of arbitration.

(4) Disputes arising from exchange transactions shall be arbitrated by the Court of Arbitration of the Vienna Stock Exchange.

(5) Collateral deposited within the context of exchange transactions shall be realized in accordance with the provisions of commercial executors even if the pledgee is not a businessperson.

#### **Objection of Gambling and Wager**

**§ 51.** (1) In decisions concerning legal disputes arising from exchange transactions, an objection raised on the grounds that arbitrage transactions are to be considered gambling or wager shall not be permitted.

(2) If options and financial futures contracts are traded on recognized exchanges within Austria or outside Austria for which prices are published, the objection of gambling and wager in legal disputes arising from these transactions shall not be admissible irrespective of who presents the claim.

#### **Trading Procedure**

**§ 52** The exchange operating company shall decide on the type of trading system to be used on the exchange bearing in mind the interests of the economy in maintaining a functioning stock exchange, and taking into account the protection of investor rights, the efficiency, the type of instruments traded and the volumes traded when reaching this decision. Bearing the above-mentioned requirements in mind, the following types of trading are permissible: trading through intermediaries, through an automated trading system, through open-outcry and by the members of the stock exchange (market makers) stating fixed buy and sell prices. It is also permissible to combine several of these types of trading on one stock exchange. If trading is done in part or fully with the help of intermediaries, the only intermediaries that may be appointed for trading on the Official Market shall be the Official Brokers (*Sensale*).

#### **Price Determination**

**§ 53** Price determination for the negotiable instruments traded on the regulated market must be conducted at least once on every exchange trading day. If trading takes place through intermediaries, the trades concluded by the Official Brokers during stock exchange trading hours are the basis for price determination. The General Terms and Conditions of Business shall state if prices are to be determined by the

1. exchange operating company or,
2. by the Official Brokers posting the prices themselves; the display on a computer screen within a computer-assisted trading and information system is considered as such.

**§ 54** If a stock exchange has an automated trading system, all official prices shall be those prices that are determined within this system. If trading takes place on a stock exchange through open-outcry trading or through market makers, then the official prices are those determined during trading hours.

**§ 55** (3) In the case of § 53 para 1 no 2, all stock exchange traders entitled to participate in stock exchange trading have the right to raise objections within the period of time fixed in the General Terms and Conditions of Business with the exchange operating company regarding the correctness of the prices posted. The exchange operating company must decide immediately in such cases on the basis of the orders.

**§ 56** The exchange operating company has the obligation to ensure that the prices are published immediately. In the case of negotiable instruments traded in continuous trading only the opening and closing prices as well as the highest and lowest prices shall be published. In the case of trading in foreign means of payment, it suffices to publish an official rate of exchange on every exchange trading day. If price determination is carried out through an automated trading system (§ 54), an automated information system shall be established.

#### **Foreign Issuers**

**§ 57** Shares and other equity securities of a company with its registered office in a third country pursuant to § 2 no 8 Banking Act that are not listed on an exchange in the company's home country or in the country where they are mainly traded, shall only be admitted if the company can give a plausible



explanation confirming that it is not for reasons of investor protection that its shares have remained unlisted in these countries.

#### **Subsection 4**

#### **Commodity Exchange and Official Brokers (*Sensale*)**

##### **Authorizations**

**§ 58** (1) Special authorization shall be required from the FMA, and in the case of general commodity exchanges from the Federal Minister for Science, Research and Economy, in the following cases:

1. In the event of mergers of exchange operating companies pursuant to § 219 Stock Corporation Act, Federal Law Gazette no 98/1965 or a transformation pursuant to § 2 of the Reorganization Act, Federal Law Gazette no 304/1996;
2. In the event of a split up of exchange operating companies pursuant to § 1 of the Spin-off Act Federal Law Gazette no 304/1996;
3. In the event the stakes held reach, exceed or fall below the thresholds of 10 percent (qualified interest), 20 percent, 33 percent or 50 percent of the voting rights or of the capital of an exchange operating company; if another exchange operating company directly or indirectly holds, acquires or divests these voting rights or capital;
4. In the case of the establishment of branch operations in a third country.

(2) The granting of authorizations pursuant to para 1 shall be subject to § 3 through § 5. If there is a spin-off of the entire exchange operations of an exchange operating company, the licenses and the authorizations granted to the exchange operating company being spun-off shall be assigned to the receiving stock corporation.

(3) Authorizations pursuant to para 1 nos 1 and 2 may only be registered in the Companies Register if the required legal certificates have been submitted in the original or in the form of certified counterpart(s) (copy). The competent court must serve the notification of such entries into the Companies Register also to the FMA, but in the case of general commodity exchanges, to the Federal Minister for Science, Research and Economy.

##### **Trading on the Exchange**

**§ 59** (1) Trading on the commodity exchange shall be carried out with the intermediation of Official Brokers (*Sensale*) or directly between exchange traders or through an automated trading system.

(2) When Official Brokers are used, the provisions of § 73 and § 74 shall apply.

(3) On the general commodity exchanges, there shall be only one official trading market.

##### **Commodity Exchange – Price Determination**

**§ 60.** (1) Price determination for negotiable instruments traded on the general commodity exchange must be done by the exchange operating company either through an automated trading system or on every exchange trading day after the close of the trading session under the supervision of the Exchange Commissioner. These shall be based on transactions concluded by the intermediaries during the trading session as well as on information the intermediaries gain knowledge of in the course of exercising their function and from persons of confidence the exchange operating company may have appointed from among the exchange traders with their approval.

(2) The exchange operating company is responsible for the immediate publication of the prices determined pursuant to para 1.

##### **Official Brokers (*Sensale*)**

**§ 61** (1) The Official Brokers (*Sensale*) of the exchange are the officially appointed intermediaries that work on a self-employed basis for an exchange in accordance with § 62 and § 63.

(2) The FMA shall appoint an adequate number of Official Brokers if exchange trades are not executed exclusively by means of an automated trading system.

(3) The appointment shall be preceded by the public announcement of the position of Official Broker to be published in the Official Gazette of the newspaper "Wiener Zeitung" and in the official publication medium of the exchange operating company.

(4) The appointment of an Official Broker may be made in general for all types of intermediary transactions pursuant to § 64 para 1 or only for certain types of transactions.

(5) The FMA shall issue the Official Broker an appointment decree which names the exchange to which he/she is appointed and the scope of his/her appointment.

(6) The appointment of an Official Broker shall be published in the Official Gazette of the "Wiener Zeitung" and in the official publication medium of the exchange operating company and must be notified to the competent Chamber of Commerce at the registered office of that exchange.

**§ 62** (1) In order to become an Official Broker a person must have:

1. full legal capacity, and
2. the expert qualifications, necessary knowledge and experience, and also have successfully passed the Official Broker Exam.

(2) The following persons are excluded from being appointed:

1. persons convicted by law for an offense pursuant to § 13 Business Code 1994 as long as such sentence has not been abrogated or is not subject to restricted divulgence from the penal records;
2. persons excluded from holding public office under applicable federal laws;
3. persons dismissed from public office due to disciplinary proceedings;
4. if insolvency proceedings have been initiated against their assets, for the duration of these proceedings, or if insolvency proceedings have not been opened due to lack of assets to cover the costs, or in the case of insolvency established by court ruling;
5. persons convicted finally and conclusively for an infraction of administrative law pursuant to § 107, and as long as the sentence has not become extinct in the criminal record.

**§ 63** (1) The Official Broker Exam will be held by a commission consisting of the Securities Exchange Commissioner as chairperson, two to four experts for the securities industry from among the staff of the exchange operating company appointed by the FMA with their approval and one representative of the FMA. The commission for the examination of a commodity exchange Official Broker shall, by way derogation from the above, consist of the Commodity Exchange Commissioner as chairperson, an employee of the exchange operating company appointed by the FMA, and a further expert for the commodities industry appointed by the FMA with his/her approval.

(2) Subject of the examination shall be the candidate's knowledge of the relevant legal provisions pertaining to the business activity of an Official Broker and the required commercial knowledge to operate a business.

(3) Immediately after the examination, the commission shall decide on whether or not the candidate has passed the exam. The commission may also qualify a passing grade as "excellent" or "good".

(4) The result of the Official Broker Examination shall be documented by an examination certificate signed by the Exchange Commissioner.

**§ 64** (1) Official Brokers have the right to act as intermediaries for contracts for negotiable instruments as well as for permissible auxiliary transactions concluded on the exchange. Exchange Brokers for the Commodity Exchange are additionally authorized to act as official experts in line with usual practices in the industry. They are not permitted to mediate trades during stock exchange trading hours in securities that are not quoted on the Official Price List of the stock exchange.

(2) Official Brokers are also permitted to exercise their office outside the securities exchange within the city limits of where the exchange is located. In such case, the provisions of § 73 and § 74 shall apply.

(3) Official Brokers have the right to hold public auctions of negotiable instruments that are part of their intermediary activities if the head of the provincial government grants them the permission to do so.

**§ 65** (1) It is the duty of the Official Brokers to carry out the transactions entrusted to them with the due care of a prudent businessperson. They shall avoid any activities that may be detrimental to people's trust, their impartiality or the credibility of the prices they determine or the documents they issue.

(2) Official Brokers are prohibited from engaging in the following activities:

1. enter into transactions for their own account in negotiable instruments customary on exchanges or into contracts for which they act as intermediaries on the securities exchange, regardless of whether on or off the exchange floor, directly or indirectly; neither are they permitted to act as agents for transactions;
2. acting as guarantor or pledgor for the fulfillment of transactions they conclude or assuming any other type of guarantee;
3. carrying on any independent business activities, being active in another business enterprise or being a member of the management or of the supervisory board of a stock corporation, cooperative association or savings bank insofar as this status might prejudice their impartiality or the credibility of the prices they determine or of the documents they issue;
4. joining together with other Official Brokers or commercial brokers in order to mediate transactions or portions of these transactions jointly; however, if the ordering party agrees, the joint intermediation of individual transactions is permitted;

5. accepting orders placed with them by mail, by telephone, or by any other means of telecommunication unless they personally know the party placing the order or they have confirmed their identity;
6. accepting orders if they know or should know that the ordering party is unable to pay or fulfill commitments;
7. accepting orders if they have reason to suspect that a transaction is fictitious or a transaction is being made with the sole purpose of damaging a third party;
8. suggesting or determining prices that are not based on § 53 para 1, second sentence or § 60 para 1, second sentence.

(3) The transactions concluded by the Official Brokers shall be valid even if they commit a breach of duty as stated in paragraph 2 nos 1, 2, 4 and 7.

(4) Official Brokers are bound to secrecy regarding orders, negotiations and the transactions concluded.

(5) Official Brokers shall perform their function in person and are not permitted to use any vicarious agents to conclude transactions or to fulfill their duty of determining the prices. However, they may employ them for the acceptance of orders to mediate transactions.

(6) Insofar as the Official Brokers pursuant to paragraph 5 employ one or more vicarious agents, they are obliged to take measures pursuant to § 119 para 4 to prevent inside dealings.

**§ 66** (1) The Official Brokers are required to be present on the exchange during the entire trading session or to make provisions to be represented by other Official Brokers; the Exchange Commissioner and the exchange operating company shall be notified in writing of who will act as their representative.

(2) The FMA may per decree order the Official Brokers to be present at times differing from those stated in para 1 if there is an automated trading system on the exchange, and, in spite of the divergent trading hours, the orderly functioning of trading on the exchange at any given time remains guaranteed.

**§ 67** (1) Insofar as required by the types of transactions carried out by the Official Brokers, the exchange operating company may rule that the Official Brokers of an exchange deposit collateral. When determining the amount of collateral to be deposited, the probability of an event of default as well as the probable amount of such damage shall be taken into consideration; when determining the type of collateral, the efficient realization shall be adequately taken into consideration.

(2) The exchange operating company's right to demand that Official Brokers deposit collateral for participation in a clearing procedure is not affected by the above.

**§ 68** (1) Entrusting the Official Broker with the mediation of transactions does not give him/her proxy rights to receive payments or any other performance stipulated in a contract.

(2) The Official Broker does, however, have the right, without being endowed with special proxy rights, to receive payment for negotiable instruments for which he/she acts as intermediary if these negotiable instruments are handed over by him/her.

**§ 69** (1) The Official Broker shall keep samples labeled correspondingly of each of the goods sold after sampling for which he/she acted as intermediary, unless the parties release him/her from this duty or if common local practice with regard to the type of goods releases him/her from doing so, until the goods are accepted without objections to their condition or until the transaction is concluded in any other way.

(2) The activities of the Official Broker shall be supervised by the exchange operating company, which shall have the right to inspect all books of the Official Broker for this purpose.

**§ 70** (1) The Official Brokers shall be appointed for an unlimited period of time. The FMA shall, upon request of the exchange operating company, suspend Official Brokers from office in the following cases:

1. they have completed the age of 65, effective as of the end of that year;
2. they voluntarily step down from office;
3. they are sentenced by a court of law for a criminal offense pursuant to § 13 of the Commercial Code 1994;
4. if bankruptcy proceedings have been initiated on their assets or if such bankruptcy proceedings have not been opened due to lack of assets to cover the costs;
5. if they are restricted in their legal capacity for any reason other than the ones mentioned in no 4;
6. if they were prevented from exercising their office for longer than one year.

(2) The voluntary resignation from office pursuant to para 1 no 2 may be effectively notified to the exchange operating company only in writing with three months' notice and shall take effect at the end of the following month.

(3) The FMA may prolong the duration of the tenure of office of an Official Broker when he/she reaches the age limit, upon request of the Official Broker, by periods of five years if this becomes necessary due to a reduced number of transactions and lack of qualified applicants for the position.

(4) Before an Official Broker is removed from office, the interest group representative of the Official Brokers, provided such a body exists on the exchange concerned, shall be heard.

**§ 71 (1)** If an Official Broker commits a breach of duty under § 65 paras 2 and 4 to 6, he/she violates administrative law and may be fined up to EUR 10,000 and the FMA, upon request of the exchange operating company, may suspended him/her from office for a period of up to one year or remove him/her from office altogether depending on the type of offense and its severity for which he/she has been sentenced by law.

(2) The FMA has the right to temporarily suspend an Official Broker from office if:

1. criminal proceedings have been initiated against an Official Broker in accordance with para 1 or if he or she is being prosecuted in criminal proceedings (§ 48 para 1 no 1 and 2 Code of Criminal Procedure) and the character and severity of the allegations are capable of damaging the trustworthiness of the Official Broker or pose a danger for persons who make use of the Broker's services;
2. in the event and for the length of time the Official Broker fails to maintain the security deposited (§ 67) at the prescribed amount and in the prescribed composition even after being requested to do so by the exchange operating company;
3. if, and for the length of time the assets of the Official Broker are under reorganization proceedings;
4. if the Official Broker's pecuniary circumstances are in distress, something which may be assumed especially if an order of distraint has been issued against him/her due to financial obligations or if a court ordered seizure against him/her has been unsuccessful.

**§ 72 (1)** The right of the interest group representatives to be heard pursuant to § 70 para 4 also applies to resolutions on the temporary banning of Official Brokers from office in accordance with § 71 para 1 and on the suspension from office in accordance with § 71 para 2 in which case the hearing may also be held at a later date.

(2) The Public Prosecutor shall inform the FMA of any investigation procedures against an Official Broker and of the termination of such procedures or the withdrawal of the prosecution (§ 194 and § 208 para 3 Code of Criminal Procedure); the court of law shall inform the FMA of the end of the criminal prosecution and the outcome of the criminal proceedings.

#### **Anonymous Transactions**

**§ 73** It is the Official Broker's duty not to name the other party if both partners are members of the exchange and the settlement of accounts takes place under a clearing system with collateral deposits to guarantee the fulfillment of transactions unless the exchange transaction is not fulfilled in time.

**§ 74** The Official Broker has the right not to name the other party to the contract insofar as he/she may expect to receive adequate collateral or a full guarantee. If the Official Broker has not received adequate collateral, then he/she is liable towards that party with which he/she has concluded the transaction for the damage that results therefrom, the Official Broker being at fault for concluding a transaction with a person that is not in the position to give a full guarantee.

### **Section 3**

#### **Multilateral Trading Systems (MTF, OTF)**

##### **Subsection 1**

##### **Admission**

##### **Trading and Execution of Trades on MTF and OTF**

**§ 75 (1)** The operator of an MTF or an OTF must, in addition to meeting the organizational requirements pursuant to § 29 to § 34 and § 38 to § 44 Securities Supervision Act 2018, establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of disruption to the system.

(2) The operators of an MTF or OTF must have in place the following:

1. General terms and conditions of business which include as a minimum:
  - a) rules regarding the criteria for determining the financial instruments that can be traded in its systems;
  - b) rules governing the participation in trading on an MTF or OTF; these rules must correspond at least with the requirements pursuant to § 28 and § 29;

- c) transparent rules regarding the criteria for determining the financial instruments that can be traded in its systems;
  - d) transparent and non-discriminatory rules that are established, published and maintained and implemented based on objective criteria that govern access to its facility;
2. where applicable, investment firms and market operators operating an MTF or an OTF must provide, or are satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded;
  3. take the measures required pursuant to Article 3 (2) first sub-sentence of Regulation (EU) No 909/2014 to ensure that financial instruments are recorded in the custody account held with a central depository on or before the planned settlement date, unless such an entry has already been done;
  4. define procedures pursuant to Article 6 (1) of Regulation (EU) No 909/2014 so that the relevant information on the transactions in financial instruments can be confirmed on the day on which the transaction is executed;
  5. take the measures necessary to ensure compliance with Article 5 (2) of Regulation (EU) No 909/2014;
  6. take measures to be able to clearly recognize conflicts between the interests of an MTF or OTF including their operators and their owners, and the requirements for the legitimate operation of MTF or OTF as well as the interests of trading participants and users, and regulate the detrimental effects of such conflicts on the legitimate operation or the interests of the trading participants and users,
  7. meet the requirements pursuant to § 10 to § 15 and § 24 and to set up effective systems, procedures and measures;
  8. clearly inform their exchange members or exchange traders of their respective responsibilities for the settlement of the transactions executed.
  9. have in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of that MTF or OTF.

(3) An MTF and OTF must have at least three active members or users, each having the opportunity to interact with all the others in respect to price formation.

(4) Where a transferable security that has been admitted to trading on a regulated market is also traded on an MTF or an OTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF or an OTF.

(5) The operator of an MTF or an OTF must immediately comply with any instruction from the competent authority pursuant to § 93 to suspend or remove a financial instrument from trading.

(6) The operator of an MTF or an OTF must provide the FMA with a detailed description of the functioning of the MTF or OTF, including — without prejudice to § 93 paras 1, 6 and 7 — any links to or participation by a regulated market, an MTF, an OTF or a systematic internalizer owned by the same investment firm or market operator, and a list of their exchange members, exchange traders and/or users. The FMA must make this information available to ESMA upon request.

(7) The FMA must notify EMSA of every license or permit granted for the operation of an MTF or OTF to an investment firm or a market operator.

(8) In decisions concerning legal disputes arising from exchange transactions, the objection that margin trading is judged to be gambling or wager shall be precluded as grounds for a claim.

#### **Synchronization of Clocks Used in Trading Operations**

**§ 76** The operator of an MTF or OTF as well as their trading members are required to synchronize the clocks they use in trading to record the date and time of events that must be reported.

#### **Special Requirements for MTFs**

**§ 77** (1) Apart from the requirements set out in § 29 to § 34 and § 38 to § 44 Securities Supervision Act 2018 as well as § 75, operators of an MTF must define non-discretionary rules for the execution of orders in the system.

- (2) The operators of an MTF must establish procedures
  1. to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operations, and to establish effective measures to mitigate such risks;
  2. to have effective arrangements to facilitate the efficient and timely finalization of the transactions executed within its systems; and
  3. to have available, at the time of authorization and on an ongoing basis, sufficient financial resources to facilitate the MTF's orderly functioning, having regard to the nature and extent of

the transactions concluded on the market and the range and degree of the risks to which it is exposed.

(3) § 47 to § 61, § 62 paras 1, 3 and 4, § 63 paras 1 to 3, 5 and 6 as well as § 64 and § 65 Securities Supervision Act 2018 shall not apply to transactions concluded under the rules governing an MTF between its members or exchange traders or between the MTF and its members or participants with respect to the use of the MTF. However, the exchange members or traders on the MTF must comply with the obligations set out in § 47 to § 65 Securities Supervision Act 2018 with respect to their clients in cases in which they act on behalf of their clients to execute their orders within an MTF.

(4) The operators of an MTF are not permitted to use their own capital to execute client orders or to engage in matched principal trading.

#### **Special Requirements for OTFs**

**§ 78** (1) The operation of an OTF and systematic internalization within the same legal entity is not permitted. An OTF shall not be permitted to connect to a systematic internalizer so as to enable the interaction of orders in an OTF with orders or quotes in a systematic internalizer. An OTF shall not be permitted to connect with another OTF in a way that enables orders in different OTFs to interact.

(2) The operator of an OTF must establish arrangements to prevent the execution of client orders in an OTF against the own capital of the operator of the OTF or of a person or legal entity which is part of the operator's group.

(3) The operator of an OTF is permitted to engage in trading for its own account only in sovereign debt instruments for which there is no liquid market, provided this does not involve matched principal trading.

(4) The operator of an OTF may instruct another investment firm to carry out market making on that OTF on an independent basis. An investment firm shall be deemed to carry out market making on an OTF on an independent basis if it has no close links with the operator of the OTF.

(5) The execution of orders on an OTF is carried out on a discretionary basis. The operating of an OTF shall exercise discretion only if one or both of the following circumstances are given:

1. when deciding to place or retract an order on the OTF they operate;
2. when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations pursuant to § 62 to § 64 Securities Supervision Act 2018.

For systems that receive crossing client orders, the operator of an OTF may decide if, when and how many of two or more orders it wants to match within the system.

(6) In accordance with paragraphs 1 and 4 and with § 79, and without prejudice to paragraph 3, the operator of an OTF may, in systems that arrange transactions in non-equity capital instruments, facilitate negotiations between clients so as to bring together two or more potentially compatible interested parties in a matching transaction.

(7) Paras 5 and 6 shall apply irrespective of § 75 of this federal act and of § 62 to § 64 Securities Supervision Act 2018.

(8) The FMA may request detailed explanations from every operator of an OTF and from every applicant for a license to operate an OTF regarding the reasons why the system does not meet the criteria of a regulated market, MTF or systematic internalizer and why it cannot be operated as such. The FMA may request the submittal of a detailed description of the scope of the discretionary powers when using the OTF, in particular, regarding when an order in an OTF may be retracted and when and how two or more matching principal orders within the OTF can be matched. In addition, the operator of an OTF must provide the FMA with information explaining its use of matched principal trading. The FMA monitors an investment firm's or market operator's engagement in matched principal trading to ensure that it continues to fall within the definition of such trading pursuant to § 1 no 23 and that its engagement in matched principal trading does not give rise to conflicts of interests between the investment firm or the OTF operators and their clients.

(9) § 47 to § 65 Securities Supervision Act 2018 shall apply to transactions concluded on an OTF.

#### **Special Requirements for the Matching of Agent Orders in an OTF**

**§ 79.** (1) The operator of an OTF is permitted to engage in matched principal trading in debt securities, structured finance products, emission allowances and certain derivatives only if the client has consented to the process.

(2) The operator of an OTF shall not be permitted to use matched principal trading to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligations set out in Article 5 of Regulation (EU) No 648/2012.

(3) The operator of an OTF shall establish arrangements ensuring compliance with the definition of "matched principal trading" in § 1 no 23.

**Subsection 2**  
**Monitoring (MTF, OTF)**

**Monitoring Compliance with the Rules of the MTF and OTF and Other Legal Obligations**

**§ 80.** (1) The operator of an MTF or OTF must establish and maintain effective arrangements and procedures relevant to the MTF or OTF for the regular monitoring of compliance by its exchange members, exchange traders or users with its rules.

(2) The operators of an MTF or OTF must

1. monitor orders placed by the exchange members, exchange traders or users in their systems including orders cancelled and executed in order to recognize
  - a) violations of these rules,
  - b) disruptive trading conditions,
  - c) modes of behavior that may indicate prohibited activities pursuant to Regulation (EU) No 596/2014, or
  - d) system disruptions with respect to a financial instrument

2. use the resources necessary to ensure effective monitoring.

(3) The operator of an MTF or OTF may request an issuer, or, in the case of inclusion in trading without the consent of the issuer, it may request the party having submitted the application for inclusion in trading, to hand over all relevant reference data relating to its financial instruments provided this is required for compliance with the provisions of Article 27 of Regulation (EU) No 600/2014 and Article 4 of Regulation (EU) No 596/2014. Under the same conditions, a systematic internalizer may request the handing over of the reference data pursuant to § 1 no 28 Securities Supervision Act 2018.

(4) In the case of suspected market conditions that may disrupt the market, of modes of behavior that indicate prohibited activities pursuant to Regulation (EU) No 596/2014, in the case of system disruptions relating to a financial instrument or the violation of other regulations which are the competence of the FMA, the operator of an MTF or OTF shall immediately inform the FMA.

(5) The FMA must report information of relevance in the meaning of para 3 that it receives to ESMA and the competent authorities of the other member states. Insofar as the information relates to activities that may indicate prohibited behavior pursuant to Regulation (EU) No 596/2014, the FMA must be convinced of the existence of such suspicious behavior before it notifies the ESMA and the competent authorities of the other member states.

(6) The operator of an MTF or OTF must immediately send any relevant information in the meaning of paras 4 and 5 to the FMA and must fully support the FMA with the investigation of market abuse within or through its systems and the prosecution of market abuse.

(7) The FMA may, if this is required for maintaining the orderly functioning of an MTF, ban the operator of an MTF from using a central counterparty, a clearing agent or a clearing and settlement system in another member state. The use of such a clearing and settlement system may be banned, in particular, if

1. the efficient and economic settlement of the concerned trade cannot be guaranteed;
2. the technical requirements for the settlement of transactions executed on the MTF do not permit the smooth and orderly functioning of financial markets.

(8) Para 7 does not affect the competence of Oesterreichische Nationalbank (OeNB) as supervisory body for payment systems pursuant to § 44a of the National Bank Act 1984 – Federal Law Gazette I no 50/1984. The FMA must take into consideration the supervisory function already exercised by OeNB in order to avoid redundant reviews.

**Trading Halts and Exclusion of Financial Instruments from Trading on an MTF or an OTF**

**§ 81.** (1) Operators of MTF or OTF must halt trading in a financial instrument that no longer meets the provisions of the MTF or OTF pursuant to § 75 to § 79 irrespective of § 93 para 2 no 7 and no 12, or must exclude said financial instrument from trading insofar as such measure does not contravene investor interests due to the risk of a major damage or of being contrary to the interest of maintaining a properly functioning market due to the risk of a substantial disruption.

(2) The operator of an MTF or OTF that suspends trading or removes from trading a financial instrument pursuant to para 1 must also suspend trading in derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018, which are related to such financial instrument or reference such financial instrument where this is necessary to support the objectives of a trading suspension in the underlying financial instruments or excluding these from trading.

(3) The operator of an MTF or OTF must make public its decision on the suspension or removal of the financial instrument from trading and any related derivatives and communicate the relevant decisions to the FMA.

(4) The FMA must ensure that regulated markets, other MTFs, other OTFs and systematic internalizers who trade in same financial instrument or derivatives pursuant to Annex I Section C nos 4 to 10 of Directive 2014/65/EU that are related to or reference the financial instrument, also suspend or remove such financial instrument or derivatives from trading, where the suspension or removal pursuant to is due to suspected market abuse, a take-over bid or the non-disclosure of inside information on the issuer or the financial instrument thereby constituting a violation of Articles 7 and 17 of Regulation (EU) No 596/2014 except where such suspension or removal would cause significant damage to investors' interests or the orderly functioning of the market. The FMA must immediately publish its decision and inform ESMA and the competent authorities of other member states of the action taken.

(5) If the FMA receives a notification from the competent authority of another member state regarding the suspension of trading or exclusion of a financial instrument from trading, it must ensure that the regulated market, MTF, OTF and systematic internalizer who trade in same financial instrument or derivatives pursuant to Annex I Section C Nos 4 to 10 of Directive 2014/65/EU that are related to or reference the financial instrument, also suspend or remove such financial instrument or derivatives from trading, where the suspension or removal pursuant to is due to suspected market abuse, a take-over bid or the non-disclosure of inside information on the issuer or the financial instrument thereby constituting an infringement of Articles 7 and 17 of Regulation (EU) No 596/2014 except where such suspension or removal would cause significant damage to investors' interests or the orderly functioning of the market.

(6) Should the FMA decide not to suspend trading in or exclude from trading the financial instrument or derivatives pursuant to § 1 no 7 lit d to k Securities Supervision Act 2018 that are related to said financial instrument or reference it, it must notify the ESMA and the other competent authorities of such decision.

(7) The reporting obligations pursuant to paras 3 to 6 also apply when the suspension from trading is lifted in a financial instrument or derivatives referred to on § 1 no 7 lit d to k Securities Supervision Act 2018 that relate to said financial instrument or reference it.

(8) The reporting obligations pursuant to paras 3 to 6 also apply when the decision to suspend trading is lifted in a financial instrument or derivatives referred to in § 1 no 7 lit d to k Securities Supervision Act 2018 that relate to said financial instrument or reference it, or are affected by the suspension or exclusion from trading by the FMA pursuant to § 93 para 2 nos 7 and 12.

### **Subsection 3**

#### **Special Features of an MTF**

##### **SME Growth Market**

**§ 82.** (1) The operator of an MTF whose home member state pursuant to § 1 no 14 is Austria, may request the registration of the MTF as an SME growth market with the FMA. The registration requires a written application.

(2) The registration of an MTF as an SME growth market must be done by the FMA, provided the MTF has effective rules, systems and procedures that ensure that the following conditions are complied with:

1. At least 50% of the issuers whose financial instruments are admitted to trading on the MTF are small and medium-sized companies at the time the MTF is registered as an SME growth market and in every subsequent calendar year.
2. Appropriate criteria have been defined for the original and ongoing admission of financial instruments of issuers to trading on the market.
3. Sufficient information has been published regarding the original admission of financial instruments to trading on the market so as to enable investors to reach informed decisions on whether or not to invest in the financial instrument. The information must be made available either in the form of an admission document or a listing prospectus if the requirements defined in Regulation (EU) 2017/1129 apply regarding a public offer in connection with the original admission of the financial instrument to trading on the MTF.
4. There is regular financial reporting by an issuer or on behalf of an issuer on the market, in particular, audited annual financial statements.
5. The issuers defined in Article 3 (1) No 21 of Regulation (EU) No 596/2014 on the market and the persons defined in Article 3 (1) No 25 of Regulation (EU) No 596/2014 who exercise managerial duties at the issuers as well as the related parties defined in Article 3 (1) No 26 of Regulation (EU) No 596/2014 meet the respective requirements applicable to them pursuant to Regulation (EU) No 596/2014.



6. The statutory information regarding the issuers pursuant to § 1 no 22 on the market is stored and publicly disseminated.

7. There are effective systems and control mechanisms in place to recognize and prevent market abuse on the concerned market pursuant to Regulation (EU) No 596/2014.

(3) Compliance with other obligations pursuant to this federal act in connection with the operation of an MTF by the operator of an MTF is not affected by the requirements of para 2. The operator of an MTF may define additional requirements.

(4) The FMA may revoke the registration of an MTF as an SME growth market under the following circumstances:

1. The operator of an MTF requests the revocation;

2. The requirements of para 2 in connection with the MTF are no longer met.

(5) The FMA must inform the ESMA as soon as possible of the registration or revocation of the registration of an MTF as an SME growth market.

(6) The financial instrument of an issuer admitted to trading on an SME growth market may only be traded on another SME growth market if the issuer is notified of this and has not raised any objections. In this case, no obligations are imposed on the issuer with respect to this other SME growth market in the context of governance and control or with respect to initial, regular or ad hoc disclosures.

## **Section 4**

### **Systematic Internalizers**

#### **Reporting Obligation of Systematic Internalizers**

**§ 83.** Credit institutions and investment firms within the scope of freedom to provide services pursuant to § 17 or operating through a branch pursuant to § 19 within in Austria that meet the requirements of a systematic internalizer in the meaning of § 1 no 28 Securities Supervision Act 2018, must immediately report this circumstance to the FMA. The FMA must immediately send this information to ESMA.

## **Section 5**

### **Data Reporting Service Providers**

#### **Subsection 1**

#### **Authorization Procedure for Data Reporting Service Providers**

##### **Mandatory Application for Authorization**

**§ 84.** (1) The making available of an approved publication arrangement (APA), the providing of consolidated tape data (consolidated tape provider, CTP) or of an approved reporting mechanism (ARM) shall require the prior authorization of the FMA to be exercised as a regular occupation or business insofar as Austria is the home member state of the data reporting services.

(2) By way of derogation from para 1, an investment firm or an operator of an exchange shall be permitted to provide the services of an APA, CTP, or ARM, if the FMA has previously determined that they meet the requirements for data reporting services providers pursuant to this federal act. Such services shall be included in their authorization.

(3) The FMA must register all data reporting services providers. This register must be publicly accessible and contain information on the services and/or activities for which the data reporting services provider is authorized. The register must be updated regularly. The FMA must inform ESMA of every authorization granted. Where the FMA has withdrawn an authorization pursuant to § 87, it must publish this fact in the register for a period of five years.

(4) The services provided by data reporting services providers shall be subject to the supervision of the FMA. The FMA must regularly review compliance by the data reporting services provider with this federal act. The FMA must monitor that the data reporting services providers comply at all times with the requirements for initial authorization under this federal act.

(5) The auditor of the data reporting services provider shall be subject to § 93 Securities Supervision Act 2018.

##### **Scope of Authorization**

**§ 85.** (1) The authorization must state the data reporting services that the data reporting services provider is permitted to provide. A data reporting services provider seeking to extend its business to additional data reporting services shall submit a request for extension of its authorization.

(2) An authorization granted by the competent authority of another EU member state shall be valid in Austria and permit a data reporting services provider to supply those services in Austria for which it was authorized.

### **Procedure for Granting and Refusing Requests for Authorization**

**§ 86.** (1) The FMA shall not grant authorization unless and until such time as it is fully satisfied that the applicant complies with all requirements of this federal act.

(2) A data reporting services provider must furnish the FMA with all information, including a program of operations setting out, inter alia, the types of services it plans to provide and its organizational structure so as to enable the competent authority to satisfy itself that the data reporting services provider established, at the time of initial authorization, all the necessary arrangements to meet its obligations under the provisions of this federal act. The information that must be supplied shall include an expert opinion confirming that the data reporting services provider meets all of the technical requirements to comply with the provisions of this federal act and of Commission Delegated Regulation (EU) 2017/571 supplementing Directive 2014/65/EU with regard to regulatory technical standards on the authorization, organizational requirements and the publication of transactions for data reporting services providers, OJ No L 87 of 31 March 2017, page 126.

(3) An applicant shall be informed within six months of having submitted the complete application whether or not authorization has been granted.

### **Withdrawal of Authorization**

**§ 87.** (1) The FMA may withdraw the authorization granted to a data reporting services provider if said provider fails to make use of the authorization within twelve months or has not provided any data reporting services in the preceding six months.

(2) The FMA shall withdraw the authorization granted to a data reporting services provider where the provider:

1. expressly renounces its authorization,
2. has obtained authorization on the basis of false information or in any other unlawful manner,
3. no longer meets the requirements under which authorization was granted,
4. has seriously and systematically infringed the provisions of this federal act, of Directive 2014/65/EU or of Regulation (EU) No 600/2014.

### **Requirements for the Managing Body of the Data Reporting Service Provider**

**§ 88.** (1) All members of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the data reporting service provider's activities. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

(2) Should a market operator seek authorization to operate an APA, a CTP or an ARM, and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, such persons are deemed to comply with the requirements laid down in this paragraph.

(3) The data reporting service provider must notify the FMA of all members of all members its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.

(4) The management body of a data reporting service provider must ensure the implementation of the governance arrangements that ensure effective and prudent management of an organization, including the segregation of duties in the organization and the prevention of conflicts of interests, and in a manner that promotes the integrity of the market and supports the interests of its customers.

(5) The FMA shall refuse authorization if it is not satisfied that the person(s) who will effectively direct the business of the data reporting service provider are of sufficiently good repute or if there are objective and demonstrable grounds for believing that proposed changes to the management of the firm pose a threat to its sound and prudent management and to the adequate consideration of customer interests and the integrity of the market.

## **Subsection 2**

### **Organizational Requirements**

#### **Conditions for Approved Publication Arrangements (APA)**

**§ 89.** (1) An APA must have adequate policies and arrangements in place to make public the information required under to Articles 20 and 21 of Regulation (EU) No 600/2014 as close to real time as is technically possible, on a reasonable commercial base. The information shall be made available free of charge 15 minutes after the APA has published it. The APA must be equipped with the functionality to efficiently and consistently disseminate such information in a way that ensures fast access to the

information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

(2) The information made public by an APA in accordance with para 1 shall include, at least, the following details:

1. the identifier no of the financial instrument,
2. the price at which the transaction was concluded,
3. the volume of the transaction,
4. the time of the transaction,
5. the time the transaction was reported,
6. the price notation of the transaction,
7. the code for the trading venue on which the transaction was executed, or, if the transaction was executed through a systematic internalizer, the code "SI" or otherwise "OTC",
8. if applicable, an indicator that the transaction was subject to specific conditions.

(3) The APA shall set up and maintain effective administrative arrangements designed to prevent conflicts of interests with its customers. An APA which is also a market operator or investment firm, must treat all information collected in a non-discriminatory manner and shall operate and maintain appropriate arrangements to separate different business functions.

(4) The APA must have sound security mechanisms in place that are designed to guarantee the security of the means of transfer of information, to minimize the risk of data corruption and unauthorized access and to prevent the leakage of information not yet published. The APA must maintain adequate resources and have backup-facilities in place that enable it to provide and maintain its services at all times.

(5) The APA must have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request retransmission of any such erroneous reports.

#### **Conditions for Consolidated Tape Providers (CTPs)**

**§ 90.** (1) A CTP must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20 of Regulation (EU) No 600/2014, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as technically possible, on a reasonable commercial basis. This information must comprise at least the following details:

1. the identifier of the financial instrument,
2. the price at which the transaction was concluded,
3. the volume of the transaction,
4. the time of the transaction,
5. the time the transaction was reported,
6. the price notation of the transaction,
7. the code for the trading venue on which the transaction was executed, or, if the transaction was executed through a systematic internalizer, the code "SI" or otherwise "OTC",
8. if applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction,
9. if applicable, an indicator that the transaction was subject to specific conditions,
10. a flag to indicate which of those waivers the transaction was subject to if the obligation to make public the information referred to in Article 3 (1) of Regulation (EU) No 600/2014 was waived in accordance with point (a) or (b) of Article 4 (1) of that Regulation.

The information must be made available free of charge 15 minutes after the CTP has published it. The CTP must be equipped with the functionality to efficiently and consistently disseminate such information in such a way that ensures fast access to the information concerned, on a non-discriminatory basis and in formats that are easily accessible and utilizable for market participants.

(2) A CTP must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 10 and 21 of Regulation (EU) No 600/2014, consolidate it into a continuous electronic data stream and make the following information available to the public as close to real time as is technically possible, on a reasonable commercial basis, including, at least, the following details:

1. the identifier or identifying features of the financial instrument,
2. the price at which the transaction was concluded,
3. the volume of the transaction,
4. the time of the transaction,
5. the time the transaction was reported,
6. the price notation of the transaction,

7. the code for the trading venue on which the transaction was executed, or, if the transaction was executed through a systematic internalizer, the code "SI" or otherwise "OTC",
8. if applicable, an indicator that the transaction was subject to special terms.

The information must be made available free of charge 15 minutes after the CTP has published it. The CTP must be equipped with the functionality to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilizable for market participants.

(3) The CTP must ensure that the data is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified in Delegated Regulation (EU) 2017/571 are consolidated.

(4) The CTP must set up and maintain effective administrative arrangements designed to prevent conflicts of interests with its customers. In particular, a market operator or an APA that also offers a consolidate tape must treat all information collected in a non-discriminatory manner and shall operate and maintain appropriate arrangements to separate different business functions.

(5) The CTP must have sound security mechanisms in place that are designed to guarantee the security of the means of transfer of information, to minimize the risk of data corruption and unauthorized access and to prevent the leakage of information not yet published. The home member state imposes the obligation on the CTP to maintain adequate resources and have backup-facilities in place to offer and maintain its services at all times.

#### **Conditions for Approved Reporting Mechanisms (ARMs)**

**§ 91.** (1) An ARM must have adequate policies and arrangements in place to report the information required under Article 26 of Regulation (EU) No 600/2014 as fast as possible, and no later than the close of the working day following the day upon which the transaction took place. This information must be reported pursuant to the requirements of Article 26 of Regulation (EU) No 600/2014.

(2) The ARM must set up and maintain effective administrative arrangements designed to prevent conflicts of interests with its customers. An ARM which is also a market operator or investment firm must in particular treat all information collected in a non-discriminatory manner and shall operate and maintain appropriate arrangements to separate different business functions.

(3) The APA must have sound security mechanisms in place that are designed to guarantee the security and authentication of the means of transfer of information, to minimize the risk of data corruption and unauthorized access and to prevent information leakage so as to guarantee the confidentiality of the data at all times. The ARM must maintain adequate resources and have back-up facilities in place in order to be able to offer and maintain its services at all times.

(4) The ARM must set up systems that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the investment firm and where such error or omission occurs, to communicate details of the error or omission to the investment firm and request re-transmission of any such erroneous reports. The ARM must furthermore set up systems that enable it to recognize errors or omissions it has caused itself, to correct these and to transmit the corrected and complete transaction reports to the competent authority or, if applicable, to retransmit these reports.

### **Section 6**

#### **Supervisory Powers**

##### **Subsection 1**

##### **Supervision**

**§ 92** (1) Securities exchanges and trading on these exchanges as well as the MTFs and OTFs operated by the exchange operating company as well as trading on these facilities are subject to the supervision of the FMA. The FMA shall supervise the organization of the exchange and the decisions made by the bodies of the exchange operating company as to their compliance with law, in particular through the Exchange Commissioner appointed pursuant to § 98. The general commodity exchanges and trading on these are subject to the supervision of the Minister for Science, Research and the Economy. The supervisory authorities must supervise compliance with all legal provisions applicable to exchanges. In this context, the supervisory authorities shall bear in mind the interest in a properly functioning securities industry for the benefit of the national economy and in safeguarding the vital interests of the investing public. If the exchange operating company commits a violation of the provisions of this federal act, or of any decrees or official notices issued under this federal act, the competent supervisory authorities shall, notwithstanding the necessary measures to be taken by the exchange operating company in the case of imminent danger pursuant to § 93 para 7, order the exchange operating company under penalty of a fine to reinstate the proper state of affairs within a reasonable period of time considering the circumstances of the case.

(2) The FMA shall, notwithstanding the tasks assigned to it under other federal acts, within the scope of its supervisory function pursuant to para 1, supervise compliance with the provisions of this federal act as well as with decrees issued under this federal act, with Regulation (EU) No 600/2014 and, insofar as applicable, Regulation (EU) No 575/2013, Regulation (EU) No 1031/2010 as well as with delegated regulations issued under any of these EU Regulations or Directive 2014/65/EU as well as a regulatory technical standard of relevance for the exchange supervisory authority in the meaning of Articles 10 to 15 of Regulation (EU) No 1095/2010, and in this context, give consideration to the interests in a functioning securities industry for the benefit of the national economy and in safeguarding the vital interests of the investing public. When executing the provisions mentioned, the FMA must take into account the European convergence of supervisory instruments and supervisory procedures. To this end, the FMA must apply the guidelines, recommendations and other standards issued by ESMA. The FMA may depart from these guidelines and recommendations provided there is a legitimate reason, especially in the case of an inconsistency with the provisions of federal law.

(3) The FMA must maintain a list of domestic regulated markets and must send this list to the European Commission, ESMA and the competent authorities of other member states.

(4) The FMA, in its function as competent authority for Title II of Regulation (EU) No 600/2014, may, by way of issuing decrees, grant waivers from pre-trade transparency requirements as set out in Articles 4, 9 and Article 18 (2) of Regulation (EU) No 600/2014 as well as authorize deferred publication for post-trade transparency requirements pursuant to Articles 7, 11, 20 (2) and 21 (4) of Regulation (EU) No 600/2014.

(5) The supervision of those affairs of the Vienna Stock Exchange that do not pertain materially to stock or commodity trading shall be the competence of the Financial Market Authority (FMA) in consultation with the Federal Minister for Science, Research and Economy.

#### **Supervisory Powers of the FMA**

**§ 93.** (1) The FMA must conduct all investigations and take all actions required:

1. to be able to assess and secure orderly and fair trading in instruments admitted to listing on a regulated market of a member state (§ 2 no 5 Banking Act);
2. with respect to entering quotes in the meaning of Article 3 (5) of Regulation (EU) No 1031/2010, to ensure compliance with the provisions of Article 59 of Regulation (EU) No 1031/2010;
3. to provide to other administrative authorities, in particular, to the Minister of Finance, the European Commission, ESMA and the competent authorities (Article 4 (1) (40) of Regulation (EU) No 575/2013) of other member states, the information they need to fulfill their tasks pursuant to the Banking Act and other laws applicable to credit institutions (§ 69 para 1 Banking Act) or pursuant to Regulation (EU) 600/2014, Directive 2014/65/EU and Directive 2013/36/EU, and to ensure collaboration and the exchange of information pursuant to § 101 to § 103;

(2) The FMA is authorized to take the following actions within the scope of its competence (§ 92) notwithstanding its powers under other federal laws:

1. to inspect books, documents and data storage devices regardless of their technical features, and to obtain copies thereof;
2. to request information from any person, including persons involved in successive order in the transmission of orders or in the execution of the respective actions and also from their principals, and, if necessary, to summon persons to appear and be interviewed in accordance with administrative procedural law;
3. to conduct onsite inspections and investigations using its own auditors or other official experts;
4. to take action to stop violations of the law and to lastingly ensure compliance with the license requirements pursuant to § 92 para 8 Securities Supervision Act 2018 in conjunction with § 70 para 4 Banking Act;
5. to take action against members of the management body pursuant to § 92 paras 1 and 8 Securities Supervision Act 2018 as well as pursuant to § 70 paras 2 and 4 Banking Act;
6. to request information from the auditors of regulated markets and data reporting service providers;
7. to request the exchange operating company pursuant to § 17 para 5 or the operator of an MTF or an OTF pursuant to § 75 para 5 to suspend trading in a financial instrument;
8. to request any person to provide information, including all relevant documents, about the size and purpose of a position or exposure in commodity derivatives, as well as about any assets or liabilities in the underlying market;
9. to request any person to take steps to reduce the size of a position or exposure;
10. to restrict for any person the possibilities of entering into positions in commodity derivatives;
11. to suspend the distribution or sale of financial instruments or structured deposits if the investment firm has not developed or does not apply any effective approval procedures for

products or has in any other manner infringed § 29 para 2 and 3, § 30 or § 31 Securities Supervision Act 2018;

12. to request the rescission of admission to trading of a financial instrument by supervisory measures pursuant to § 92 para 1 and § 93 para 7 or to demand the exclusion from trading pursuant to § 75 para 5;
13. with respect to commodity derivatives, to request information in standardized formats from participants of the relevant spot markets and reports on transactions and to directly access the traders' systems;
14. to file a complaint of suspected criminal activities pursuant to § 78 Code of Criminal Procedure with a public prosecutor or a security authority;
15. to request the handing over of existing records of telephone conversations or electronic messages or data transmission recordings from legal entities pursuant to § 26 Securities Supervision Act 2018;
16. to request information pursuant to § 134 no 2, § 135 para 2 and § 137 para 1 Code of Criminal Procedure relating to data relating to communications and to inspect findings already on record of such investigation activities and obtain copies thereof when there are reasonable grounds to suspect a violation of any provision of this federal act or of Regulation (EU) No 600/2014 and these records could be of relevance for an investigation in connection with these violations; information disclosure on data relating to communications and the surveillance of communications are subject to the procedural rules of § 153 paras 3 to 6;
17. to order temporary confiscations or confiscations; a temporary confiscation expires unless the FMA issues a confiscation order within four weeks;
18. to conduct searches of premises (§ 117 nos 2 and 3 lit a Code of Criminal Procedure); § 119 to § 122 Code of Criminal Procedure applies on the condition that the searches of premises pursuant to § 117 no 2 lit b Code of Criminal Procedure are subject to the procedural rules of § 153 paras 2, 4 to 7 and 9;
19. to make public announcements and take all required measures to inform the public properly, for example by correcting false or misleading information having been disclosed, as well as by instructing issuers or other persons who disseminated false or misleading information to publish a corrigendum;
20. to temporarily prohibit a person from exercising his or her occupation or profession.

(3) The Exchange Commissioner appointed pursuant to § 98 has the powers set out in para 2 nos 1 and 2 vis-à-vis members of the management body, all other officers of the exchange operating company, the clearing and settlement agents and the Official Brokers.

(4) A certified public accountant may also be ordered to carry out an inspection pursuant to para 2 no 1 and may, for such purpose, access the premises of the exchange operating company, of the intermediaries and of the settlement and clearing agents upon presenting the inspection mandate.

(5) Within the scope of its supervisory powers over general commodity exchanges pursuant to § 92 para 1, the Minister for Science, Research and Economy may exercise the powers set out in para 2 nos 1 to 3, 14, 17 and 19 irrespective of the powers it has under other federal laws.

(6) Should a person or legal entity commit a breach of any provision mentioned in § 92 para 2 or provisions of an official notice issued under the aforementioned provisions, the FMA may take action as set out in § 70 para 4 no 1 Banking Act against the person or legal entity; in the case of a legal entity pursuant to § 26 para 1 Securities Supervision Act 2018, the FMA may also take the action set out in § 70 para 4 no 2 Banking Act.

(7) If the violation of a provision pursuant to para 6 is committed by the exchange operating company and there is an imminent danger or if the exchange operating company fails to comply in time with an instruction issued pursuant to para 6, the supervisory authorities shall take the actions set out below to meet their supervisory duty and to prevent abuse.

1. in the case of default on the part of the exchange operating company, take the necessary decisions and actions pursuant to this federal act for as long as such danger and failure to comply persist;
2. temporarily remove the managing director, but also other officers of the exchange operating company from office. The removal from office shall be permanent if such persons persistently fail to fulfill their duties, and such action is the only way to safeguard the interest in maintaining well-functioning exchanges for the benefit of the national economy. In this case, the management of the exchange may temporarily be transferred to professionally qualified supervisory personnel;
3. order the temporary or permanent close of exchanges, if other supervisory measures do not suffice to prevent serious damage to the national economy.

(8) The FMA shall be reimbursed exchange operating company for costs incurred by the FMA in connection with the measures taken against the exchange operating company under these provisions. The individual members, issuers, official brokers and settlement and clearing agents must reimburse the exchange operating company for any costs of supervisory and investigation measures they cause.

(9) The Vienna Regional Court for Criminal Matters (*Landesgericht für Strafsachen Wien*) shall, upon application by the FMA pursuant to para 2 nos 16, 17 or 18, reach an official decision handed down by an individual judge (§ 86 Code of Criminal Procedure), with due consideration of the principle of lawfulness and proportionality pursuant to § 5 Code of Criminal Procedure. The FMA must state the grounds for such application (§ 102 para 2 nos 2 to 4; applications made pursuant to para 2 no 16 shall moreover contain the information specified in § 138 para 1 nos 1, 3 and 4 Code of Criminal Procedure) and hand it over to the court including all records.

(10) The provisions of this federal act shall not be affected by the provisions of Section 12 of the Telecommunications Act 2003 – TCA 2003, Federal Law Gazette I no 70/2003.

#### **Costs**

**§ 94** (1) The costs incurred by the FMA from its activities as a supervisory body for securities exchanges, including MTFs operated pursuant to § 2 para 2a, are costs classified as belonging to the Securities Supervision accounting entity (§ 19 para 1 no 3 and para 4 Financial Market Authority Act) and must be reimbursed in accordance with para 2. To this end, the FMA must create a joint accounting subunit for securities exchanges, central counterparties and central depositories (Market Infrastructure) supervised by the FMA.

(2) Each security exchange that charges fees must pay a lump sum of EUR 300,000 for the oversight; payment of this sum will be demanded by the FMA by official notice and the payee must pay it in four equal parts no later than by 15 January, 15 April, 15 July and 15 October of the respective reporting year. Requests for pre-payment pursuant to § 19 para 5 Financial Market Authority Act shall not apply. Should there be a shortfall in the Market Infrastructure joint accounting subunit, this shortfall must be distributed across the individual accounting units pursuant to § 19 para 2 Financial Market Authority Act; a surplus shall be allocated to provisions that shall be reversed in the subsequent year and shall be deducted only from the costs of the Market Infrastructure accounting subunit.

#### **Reporting of Infringements**

**§ 95** (1) Investment firms, market operators, data reporting service providers, credit institutions that provide securities or ancillary services or engage in investment activities as well as branches of third-country firms must have adequate procedures in place so as to enable their staff - while safeguarding the confidentiality of their identity - to report to an appropriate body any internal infringements of the provisions of this federal act, violations of decrees or official notices issued on the grounds of these provisions, violations of the provisions of Regulation (EU) No 600/2014 or a delegated regulation or official notice issued on the basis of this Regulation or of Directive 2014/65/EU. The procedures pursuant to this paragraph must meet the requirements set out in para 3 nos 2 to 4.

(2) The FMA must have effective mechanisms in place that encourage persons to report infringements or suspected infringements of the provisions of this federal act, of decrees or official notices issued based on these provisions or of the provisions of Regulation (EU) No 600/2014.

(3) The mechanisms specified in para 2 must include as a minimum:

1. special procedures for receiving reports on infringements and for their further investigation;
2. adequate protection measures for employees of employers pursuant to para 1 who report infringements within their financial institution, protecting them at least from reprisals, discrimination or other forms of mobbing;
3. protection of identity pursuant to Regulation (EU) 2016/679 for both the person who reports the infringement and for a natural person who is allegedly responsible for an infringement, throughout all stages of the proceedings, unless the disclosure of the identity is mandatory under public prosecution, court or administrative proceedings.

(4) Employees that report infringements in the meaning of this federal act within the scope of internal company procedures or to the FMA, must not be

1. discriminated against for having made the report, especially with respect to remuneration, career advancement, further education and training, relocation or when terminating their employment contract, or
2. made liable under criminal law,

unless the report submitted was intentionally false. The employer or any third party shall be entitled to compensation for damages only if the report of the employee is obviously incorrect and was made with the intent to cause damage. The right to make such a report must not be restricted by contract. Any agreements to the contrary shall be invalid.

(5) Paras 1 to 4 shall only apply to legal entities that are not subject to § 98 Securities Supervision Act 2018 or § 159 and § 160 of this federal act.

### **Reporting to ESMA**

**§ 96** The FMA must submit an annual summary report to ESMA containing information on all administrative fines imposed pursuant to § 105 to § 109 and on all other measures.

### **Data Protection**

**§ 97** When exercising its supervisory and investigative powers pursuant to § 93 para 2, the FMA must comply with provisions of Regulation (EU) 2016/679.

### **Exchange Commissioners**

**§ 98** (1) The Minister of Finance shall appoint an exchange commissioner and the required number of deputy commissioners for every securities exchange, and the Minister of Science, Research and Economy for every general commodity exchange. The exchange commissioner and his/her deputies must be actively employed, under private law or under public law, by a territorial body or exercise the profession of lawyer or public accountant. In their function as exchange commissioners, they shall be subject to instructions by the competent supervisory body. The competent federal ministers have the right to dismiss exchange commissioners and their deputies at any time.

(2) The exchange commissioners and their deputies shall be invited by the exchange operating company, giving reasonable prior notice, to all general meetings, all supervisory board meetings, all decision-making meetings of committees of the supervisory board as well as to meetings of the management addressing the admission of new members, the suspension of membership or expulsion of members, the admission or withdrawal of admission to listing of negotiable instruments to the different types of trading. They have the right to speak at any time at their request. All minutes of meetings of the bodies of the exchange operating company to which they are to be invited shall be sent to them without delay. The exchange commissioners and their deputies have the right to visit trading sessions at any time.

(3) The exchange commissioners shall immediately raise objections against all resolutions and decisions of the bodies of the exchange operating company that they consider contrary to federal laws, decrees or rulings of the competent supervisory authorities. The exchange commissioners shall, in their objections, specify the provisions they think such resolution or decision violate. Such an objection shall postpone the date as of which the resolution or decision shall take effect until the supervising authorities reach a decision on the matter. The body concerned may demand that a decision be reached by the competent supervisory authority within one week after the objection was raised. If the objection is confirmed, it is unlawful to enforce the resolution or decision objected to; the objection shall be repealed if the competent supervisory authority does not reach a decision as to its effectiveness within one week after receiving the application from the governing body of the exchange operating company.

(4) Resolutions and decisions of the bodies of the exchange operating company that are reached outside of meetings shall be reported to the exchange commissioners and deputies immediately. In this case the exchange commissioner may raise objections only within a period of two exchange days after learning of this resolution or decision.

(5) The exchange commissioners and their deputies shall inform the competent supervisory authority without delay of any facts they gain knowledge of that require action by the supervising authority in accordance with § 93.

(6) The exchange commissioners and their deputies shall receive a remuneration (fee) from the competent federal ministry commensurate with their oversight work and the expenses involved. The competent federal ministry shall prescribe a lump sum to be paid by the exchange operating company on a yearly basis for the work connected with the oversight of the exchange commensurate with the expenses incurred by the surveillance work.

(7) The exchange commissioner, his/her representative and the exchange operating company have the right to inspect the order books and logs of the intermediaries at any time.

### **Protection of Designations**

**§ 99** (1) The word "exchange" or a similar word combination in connection with negotiable instruments in accordance with § 1 of this federal act may not be used in public in such a way so as to give the false impression that an exchange is meant in the meaning of this federal act.

(2) The designation "official broker" may only be used by persons that are appointed as such in accordance with the provisions of this federal act.

### **Fines**

**§ 100** (1) The FMA shall impose the following fines on exchange members:

1. 1 percent of the amount that falls short of the collateral to be deposited pursuant to § 33 no 4 as required by the clearing and settlement system per day, however, a minimum of EUR 70 per day;
2. 0.3 percent of the price of those securities not delivered on time to the settlement system in violation of the rules for the settlement of exchange transactions (§ 9 para 3) per day, however,



a minimum per day of EUR 250; as of the sixth day of non-delivery, this percentage rate shall increase to 0.6 percent per day.

(2) The exchange operating company and the clearing and settlement agents pursuant to § 9 para 3 are obliged to inform the FMA fully and immediately of any facts they gain knowledge of relevance under para 1 without being requested to do so.

(3) The fines prescribed pursuant to para 1 shall be transferred to the Republic of Austria.

## **Subsection 2**

### **International Cooperation**

**§ 101** (1) The Federal Minister of Finance or the FMA shall be permitted to disclose official information to foreign supervisory authorities provided:

1. the public order or other vital interests of the Republic of Austria or banking secrecy rules (§ 38 Banking Act) are not violated;
2. it is guaranteed that the country requesting information would fulfill a similar request by Austrian authorities; and
3. a request for information of the same kind by the Federal Minister of Finance or FMA would comply with the aims of this federal act.

(2) Para 1 shall apply irrespective of § 111 Securities Supervision Act 2018.

**§ 102** (1) The FMA may at any time gather information from foreign exchange supervisory authorities if this is in the interest of maintaining properly functioning exchanges for the benefit of the national economy or of safeguarding the interests of investors or if it is otherwise necessary for exercising its function as a supervisory authority.

(2) The provisions pursuant to § 101 and para 1 shall be applicable insofar as nothing to the contrary has been provided for in international agreements.

### **European Cooperation**

**§ 103** When exercising its powers to impose sanctions pursuant to § 107 para 1 nos 5 and 9, the FMA shall work closely together with the competent authorities of other member states to ensure that the supervisory and investigative actions as well as administrative sanctions can be ordered or imposed effectively. The FMA shall coordinate its measures with the competent authorities of the other member states in order to avoid redundant work and overlaps in cases in which the FMA exercises its supervisory and investigative powers across borders and imposes administrative sanctions and measures in this context.

## **Section 7**

### **Sanctions**

#### **Exercising Sanctioning Powers**

**§ 104** (1) When determining the type of sanction or measures to be imposed in the case of violations of the provisions of this federal act or of provisions of decrees or official notices issued on the basis of this federal act or of the provisions of Regulation (EU) No 600/2014 or of delegated acts issued on the basis of said Regulation, as well as when measuring the amount of a fine, the FMA must, to the extent appropriate, take into account the following circumstances:

1. the gravity and the duration of the violation;
2. the degree of responsibility of the natural persons or legal entities responsible;
3. the financial capacity of the natural person or legal entity measured, for example, on the basis of total revenues of the legal entity responsible or the annual revenues of the natural person responsible;
4. the amount of the profit gained or loss avoided by the natural person or legal entity, provided the amount can be quantified; if an exact figure cannot be determined, an estimate may be used;
5. the loss incurred by a third party due to the infringement, provided the amount can be quantified;
6. the willingness of the natural person or legal entity responsible to cooperate with the FMA;
7. previous infringements by the natural person or legal entity responsible, and
8. all potential effects of the violation of relevance for the system.

(2) The FMA must apply the General Administrative Procedure Act when exercising its supervisory powers and the Administrative Offenses Act when investigating administrative offenses under this federal act.

## Further Penal Provisions

### § 105 (1) Anyone

1. who acts as a data reporting service provider pursuant to § 84 without having the required authorization or
2. who engages in an activity requiring a license pursuant to § 3 and § 4 in conjunction with § 92 para 1 issued by the FMA without having the required license,

shall be deemed to have committed an administrative offense and shall be sanctioned by the FMA with a fine of up to EUR 5 million or up to two times the pecuniary benefit gained from the violation, provided such benefit can be quantified.

### (2) Any person

1. who acts as a data reporting service provider pursuant to § 84 without having the required authorization or
2. who engages in an activity requiring a license pursuant to § 3 and § 4 in conjunction with § 92 para 1 issued by the FMA without having the required license,

shall not have any right to claim remuneration, in particular, commissions, relating to these transactions. The lack of legal validity of agreements relating to these transactions shall not entail the legal invalidity of the transaction as a whole. Any agreements to the contrary and any sureties and guarantees relating to these transactions shall be legally invalid.

### § 106 (1) Anyone who infringes

1. a supervisory duty, with respect to exchange trading, pursuant to § 7 paras 1 and 2 or the notification obligation pursuant to § 7 para 4 sentence 1,
2. as an exchange member, the trading rules pursuant to § 9 or, as an exchange trader, violates the obligation pursuant to § 33 no 1,
3. the requirements with respect to the load-bearing capacity of the trading systems and contingency arrangements pursuant to § 11,
4. the requirements with respect to execution of algorithmic trading pursuant to § 12,
5. the requirements with respect to availability of direct electronic access pursuant to § 13,
6. the obligation to define tick sizes and with respect to the requirements for the relevant systems pursuant to § 14 and § 15,
7. the obligation to synchronize the clocks used for trading on the regulated market pursuant to § 16,
8. the obligation with respect to a trading suspension and the exclusion of financial instruments from trading on a regulated market pursuant to § 17 paras 1, 2, 4 and 7,
9. the obligation to carry out position management controls or the surveillance and information obligation with respect to position limits pursuant to § 19 paras 5 to 7,
10. the reporting obligation broken down by position holder with respect to trading in commodity derivatives, emission allowances or derivatives pursuant to § 20,
11. the organizational requirements for the management and administration of regulated markets pursuant to § 21 para 1 and the notification obligation pursuant to § 21 para 3,
12. the prohibition to execute client orders against proprietary capital or engage in matched principal trading pursuant to § 21 para 2,
13. the requirements with respect to the establishment of General Terms and Conditions of Business pursuant to § 23 paras 1 and 2
14. the requirements with respect to the fee structure pursuant to § 24 paras 2 to 4,
15. the requirements with respect to the governing body of a market operator pursuant to § 25,
16. the obligation to establish a nominations committee and the requirements for such committee pursuant to § 26,
17. the requirements for admission as an exchange member pursuant to § 28,
18. the requirements with respect to membership in a securities exchange pursuant to § 29 paras 1 to 4 and 7,
19. the notification obligation with respect to the establishment of remote access for exchange members to a regulated market pursuant to § 29 para 8,
20. the right to select the clearing and settlement system pursuant to § 30 para 1,
21. the requirements for the admission of financial instruments to a regulated market pursuant to § 39 paras 1 to 8,
22. the notification and disclosure obligations with respect to investments in the exchange operating company pursuant to § 48 para 5,
23. who fails to meet the suitability requirements pursuant to § 48 para 6,

24. the requirements for trading and the execution of trades through an MTF or OTF pursuant to § 75 paras 1 to 6,
25. the obligation to synchronize the clocks used in trading on an MTF or OTF pursuant to § 76,
26. the requirements for the execution of transactions on an MTF pursuant to § 77,
27. the requirements for the execution of transactions on an OTF pursuant to § 78 and § 79,
28. the obligation of surveillance or reporting with respect to the use of an MTF or OTF pursuant to § 80 paras 1, 2, 4 and 6,
29. the requirements for trading suspensions and the exclusion of financial instruments from trading on an MTF or OTF pursuant to § 81 paras 1 to 3, 7 and 8,
30. the requirements for establishing an SME growth market pursuant to § 82 para 2,
31. the organizational requirements with respect to the governing body of a data reporting service provider pursuant to § 88 paras 1 to 4,
32. the organizational requirements with respect to the operation of an approved publication arrangement (APA) pursuant to § 89,
33. the organizational requirements with respect to the operation of a consolidated tape (CTP) pursuant to § 90,
34. the organizational requirements with respect to the operation of an approved reporting mechanism (ARM) pursuant to § 91,
35. the pre-trade transparency requirements pursuant to Article 3 (1) and (3) or Article 8 (1), (3) and (4) or Article 4 (3) subparagraph 1 of Regulation (EU) No 600/2014,
36. the post-trade transparency requirements pursuant to Article 6 or 10 of Regulation (EU) No 600/2014,
37. the approval obligation with respect to deferred publication of details on the transactions pursuant to Article 7 (1) subparagraph 3 sentence 1, Article 11 (1) subparagraph 3 sentence 1 or Article 11 (3) subparagraph 3 of Regulation (EU) No 600/2014,
38. the obligations of market operators and investment firms to disclose pre-trade and post-trade data pursuant to Article 12 (1) or Article 13 (1) of Regulation (EU) No 600/2014,
39. the transparency and disclosure obligations of investment firms with respect to their quotes for shares, depositary receipts, exchange-traded funds, certificates and similar instruments pursuant to Article 14 (1), (2) sentence 1, (3) sentences 2, 3 or 4 of Regulation (EU) No 600/2014,
40. the transparency and disclosure obligations of systematic internalizers with respect to their quotes for shares, depositary receipts, exchange-traded funds, certificates and similar instruments pursuant to Article 15 (1), subparagraph 1 and subparagraph 2 sentences 1 and 3, Article 15 (2), Article 15 (4) sentence 2 of Regulation (EU) No 600/2014,
41. the obligation of systematic internalizers to define standards for access to quotes pursuant to Article 17 (1) sentence 2 of Regulation (EU) No 600/2014,
42. the transparency and disclosure obligations of investment firms and systematic internalizers with respect to their quotes for debt securities, structured financial products, emission allowances and derivatives pursuant to Article 18 (1) and (2), Article 18 (4) sentence 1, Article 18 (5) sentence 1, Article 18 (6) subparagraph 1, Article 18 (8) and (9) of Regulation (EU) No 600/2014,
43. the post-trade disclosure obligations of investment firms and systematic internalizers with respect to their quotes for shares, depositary receipts, exchange-traded funds, certificates and similar instruments pursuant to Article 20 (1) and Article 20 (2) sentence 1 of Regulation (EU) No 600/2014,
44. the post-trade disclosure obligations of investment firms and systematic internalizers with respect to debt securities, structured financial products, emission allowances and derivatives pursuant to Article 21 (1) to (3) of Regulation (EU) No 600/2014,
45. Article 22 (2) or the obligation to maintain records pursuant to Article 25 (2) of Regulation (EU) No 600/2014,
46. the provisions for the trading of derivatives pursuant to Article 28 (1) and (2) subparagraph 1, Article 29 (1) and (2), Article 30 (1) or Article 31 (2) and (3) of Regulation (EU) No 600/2014,
47. the provisions pursuant to Article 35 (1) to (3) regarding non-discriminatory access to a central counterparty, the provisions pursuant to Article 36 (1) to (3) regarding non-discriminatory access to a trading venue or the provisions pursuant to Article 37 (1) to (3) of Regulation (EU) No 600/2014 regarding non-discriminatory access to license benchmarks,
48. an obligation pursuant to Article 59 (2) or (3) of Regulation (EU) No 1031/2010 or the obligation to establish the necessary procedures and controls pursuant to Article 59 (5) lit b of Regulation (EU) No 1031/2010,

49. the thresholds defined by the position limits for the maximum size of net positions pursuant to § 18 para 1 in connection with a decree based on this provision, or any related obligations pursuant to delegated acts and implementing regulations adopted on the basis of Regulation (EU) No 600/2014 or Directive 2014/65/EU shall be deemed to have committed an administrative offense, shall be sanctioned by the FMA with a fine of up to EUR 5 million or up to two times the pecuniary benefit gained from the violation, provided the benefit gained can be quantified.

**§ 107 (1) Anyone who**

1. holds, or participates in, exchange trading sessions against the orders of the exchange operating company or of the supervisory authorities regarding the cancellation of trading sessions or the closure of exchanges,
2. fails to comply with the notification obligation pursuant to § 48 paras 1 and 2 or the obligation to submit financial statements to the FMA pursuant to § 27, or fails to do so in a timely manner;
3.
  - a) as an issuer fails to comply with the obligation to publish, transmit or notify
    - aa) pursuant to § 119 paras 1, 7, 8, 10 or 12, § 122, § 123 para 1 or 4, § 126 or § 127 or
    - bb) pursuant to a decree of the FMA issued on the basis of § 119 paras 2, 6, 7 or 9 or § 123 para 3 or 6fails to comply with the obligation in a timely manner or fails to do so in a timely manner, or
  - b) violates the obligation to publish, transmit or notify pursuant to § 119 para 4 or pursuant to a decree issued by the FMA based on § 119 para 5 second and third sentences,
4. as an exchange member commits breaches of duty pursuant to § 33 nos 1 to 3;
5. as an exchange member commits breaches of duty pursuant to § 33 no 5,
6. as an exchange member trades negotiable instruments that are not admitted to trading on the respective exchange,
7. fails to comply or fails to comply in a timely manner with the notification obligation pursuant to § 130 para 1, 7 and 8 or fails to comply or fails to comply in a timely manner with the publication obligation pursuant to § 135 para 1,
8. fails to comply or fails to comply in a timely manner with the notification obligation to the FMA and to the exchange operating company pursuant to § 130 paras 1 to 3 and 6, § 131, § 132, § 133, § 134, § 135 paras 2 and 3, § 138 or § 139, or fails to comply or to comply in a timely manner with a decree issued by the FMA based on § 136,
9. violates the requirements with respect to the outsourcing of tasks pursuant to § 22,
10. fails to meet a notification obligation pursuant to § 83,
11. employs a defendant in violation of an employment ban on said person pursuant to § 153 para 1 no 10;

shall be deemed to have committed a violation of administrative law and with respect to nos 1 to 6, 9 to 11 may be fined up to EUR 60,000, and with respect to nos 7 and 8, up to EUR 150,000.

**(2) Anyone who**

1. disrupts fair and proper trading procedures and the peace and order on an exchange by improper behavior,
  2. participates in exchange trading sessions held without a license (bucket shops) pursuant to § 3 and disseminates the prices or trades concluded on said exchange,
  3. as an exchange trader commits breaches of duty pursuant to § 33 no 1 and § 36 para 3,
  4. as an exchange trader engages in trading in negotiable instruments that are not admitted to trading on the respective exchange,
  5. in violation of the provisions of § 99 uses the word “exchange” or “official broker” fraudulently,
- shall be deemed to have committed a violation of administrative law and will be fined up to EUR 20,000.

**(3) The attempt shall be punishable by law.**

(4) The installation of systems that make it possible to participate in trading on a regulated market or in a multilateral trading system of a member state from within Austria shall not be subject to para 1 no 1. Participation in such a regulated market or such a multilateral trading system from within Austria shall not be subject to para 2 no 2.

(5) The installation of systems that enable the participation in trading in a market which has its registered office in a third country as well as participation in trading from within Austria shall not be governed by § 105 para 1 no 1 and § 107 para 2 no 2 if it meets the following conditions:

1. The legal entity responsible for trading has its registered office as set out in its articles of association in a country that is represented on the Basel Committee for Banking Supervision;
2. The exchange concerned is an equivalent market with its registered office in a third country and is regulated and supervised by a recognized public body, operates on a regular basis and is

accessible to the public directly or indirectly through a clearing member; a market with its registered office in a third country shall be deemed equivalent if it is subject to provisions that are deemed equivalent to those stated in Title III of Directive 2014/65/EU;

3. The competent authority responsible for surveilling this market in the country of its registered office declares that the surveillance of orderly trading also covers activities in Austria and that it collaborates with the FMA pursuant to § 106 to § 110 Securities Supervision Act 2018 with respect to such supervision.

(6) Administrative fines pursuant to paras 1, 2 and 7 as well as pursuant to § 71 para 1 are imposed by the FMA. With respect to paras 1 and 2, and § 71 para 1, the exchange operating company is under the obligation to disclose to the FMA fully and immediately all material facts it gains knowledge of without having to be requested to do so.

(7) Any person responsible for an exchange operating company (§ 9 Administrative Offenses Act) who

1. fails to meet his or her obligation pursuant to § 17 paras 1 and 4 to suspend trading in a financial instrument;
2. fails to meet his or her publication obligation pursuant to Title II of Regulation (EU) No 600/2014;
3. fails to meet his or her obligation to withdraw the admission to trading of a financial instrument pursuant to § 39 para 8;
4. fails to meet his or her reporting obligation with respect to the initiation of proceedings under § 38 para 4 pursuant to § 39 para 10 or fails to meet his or her notification obligation pursuant to § 29 para 8;
5. fails to meet a disclosure obligation imposed on him or her pursuant to § 28 para 4,

shall be deemed to have committed a breach of administrative law and will be fined up to EUR 60,000.

(8) A person responsible for an exchange operating company (§ 9 Administrative Offenses Act) who fails to meet the obligations of § 7 paras 6 to 9 and 11, shall be deemed to have committed an administrative offense and will be sanctioned by the FMA with a prison sentence of up to six weeks or a fine of up to EUR 150,000.

#### **Penal Provisions Regarding Legal Entities**

**§ 108** (1) The FMA may impose a fine on a legal entity if persons, who, either acting alone or as a member of a governing body of the legal entity, and who discharge managerial tasks within the legal entity based on

1. an authorization to represent the legal entity,
2. an authorization to reach decisions in the name of the legal entity, or
3. having controlling power within a legal entity

fail to meet the obligations set out in § 105 para 1 and § 106.

(2) Legal entities may also be held accountable for non-compliance with the obligations stated in § 105 para 1 and § 106 if insufficient supervision or control by a person named in para 1 has enabled such non-compliance by a person working for the legal entity.

(3) The fine pursuant to paras 1 or 2 shall be up to EUR 5 million or up to two times the pecuniary benefit gained from the violation insofar as this can be quantified or up to 10 per cent of total annual revenues pursuant to § 109.

**§ 109.** Total annual net revenues shall be the amount reported in the last audited financial statements. In the case of investment firms and credit institutions, the total annual net revenues shall be the sum of all amounts listed in nos 1 to 7 of Annex 2 of § 43 Banking Act less the expenses listed there; if the company is a subsidiary, the total annual net revenues reported in the consolidated financial statements of the parent company in the preceding financial year shall be used as basis. If the FMA cannot determine or calculate the basis for the total annual revenues, it shall estimate such revenues. All circumstances of relevance for the estimate must be taken into account.

#### **Publication of Measures and Sanctions**

**§ 110** (1) Measures pursuant to § 93 para 2 no 4, no 5, no 7 and nos 9 to 12, para 5 and 7 as well as fines imposed on natural persons and legal entities for breaches of the obligations listed in § 105 and § 106 must be published without delay by the FMA on its website stating the names of the persons or legal entities concerned and indicating the type and nature of the underlying breach.

(2) The FMA must supplement the publication by disclosing every legal means of appeal that it receives as well as all further information on the outcome of the appeal proceedings. Furthermore, the FMA must additionally publish every decision that repeals a measure or sanction contested by legal appeal in the meaning of para 1.

- (3) The disclosure pursuant to paras 1 and 2 shall be anonymous if said disclosure would

1. be unreasonable for a natural person or legal entity being sanctioned or
2. pose a threat to the stability of the financial markets in one or more member state of the European Union, or
3. jeopardize an ongoing criminal investigation.

If there are grounds for anonymous publication pursuant to nos 1 to 3, but it may be assumed that these reasons will cease to exist in the foreseeable future, the FMA may refrain from anonymous publication and publish the measures or sanctions also pursuant to para 1 after the grounds cease to exist pursuant to nos 1 to 3.

(4) The FMA may refrain completely from disclosure if publication pursuant to para 3 would not suffice to ward off a threat to the stability of the financial markets in one or more member state of the European Union or if due to the minor nature of the violation, proportionality can only be guaranteed by refraining from publication.

(5) If an objection or an appeal against an official notice which was published pursuant to paras 1 or 2 is granted suspensory effect in proceedings before a Federal Administrative Court or a court of public law, the FMA must also disclose this information in the same manner.

(6) The FMA must ensure that, in compliance with this rule, every disclosure and every supplement in this context remains available on its website for a period of five years from the time of publication. However, personal data may remain published on said website only as long as none of the criteria pursuant to para 3 nos 1 to 3 is met or as long as required under applicable data protection law.

(7) If the FMA has disclosed an administrative measure or sanction to the public, it shall concurrently report this to ESMA.

(8) The FMA must notify ESMA of any sanctions pursuant to para 1 that it imposes but does not publish in accordance with para 2 no 3 as well as all legal appeals made in connection with the sanctions and the outcome of the appeals proceedings.

#### **Legal Protection Against Publication by the FMA**

**§ 111** A party affected by a publication pursuant to § 93 para 2 no 19 or pursuant to § 110 may request a review by the FMA regarding the lawfulness of the publication in proceedings which are concluded with a final decision in the form of an official notice. In this case, the FMA shall announce the initiation of such proceedings in the same manner as the original publication. If the outcome of the review ascertains the unlawfulness of the publication, the FMA shall correct the publication or, upon request of the party concerned, publish a statement retracting it or remove it from the website.

### **Section 8**

#### **Procedural provisions**

##### **General Procedural Provisions**

**§ 112** (1) The exchange operating company shall apply the General Rules of Administrative Procedure for all procedural matters relating to the exercise of its function as official authority.

(2) In the case of onsite investigations pursuant to § 93, all official persons conducting the investigation must have a written order authorizing the investigation and must identify themselves before the start of the investigation and show the investigation order. Furthermore, § 71 paras 1 to 4 Banking Act shall apply.

(3) The money from fines imposed by the FMA pursuant to § 105 to § 109 goes to the federal government.

##### **Special Procedural Provisions**

**§ 113** The FMA is the competent authority of first instance for imposing administrative fines pursuant to § 105 to § 109.

**§ 114** The following Ministries are charged with the enforcement of:

1. § 23 para 2, § 50 and § 51, the Minister of Justice;
2. § 59 and § 60 and the supervision of commodity exchanges pursuant to § 92 para 1 as well as Article 7 (1) lit b of Regulation (EU) No 596/2014, the Federal Minister for Science, Research and Economy;
3. § 74 second sentence, the Federal Minister of Finance in agreement with the Federal Minister of Justice;
4. the remaining provisions of this federal act, the Federal Minister of Finance;

**§ 115** Without prejudice to Article XIII et seq Act Introducing the Code of Civil Procedure, and where reference is made to the "statutes" of an exchange, these shall be replaced by the "General Terms and Conditions of Business" of the respective exchange operating company.

**§ 116** The exchange operating company may, upon request of a listed company, issue an official notice permitting the switching of securities from the Official Market on the securities exchange under its statutes according to which such securities may not (or no longer) be traded to the Official Market of another securities exchange in Austria on which trading may be continued in accordance with the statutes of the exchange operating company that runs such other exchange. The official notice on the switch in listing shall not impose any obligation on the issuer to publish a prospectus or regarding any other disclosure obligations.

## Section 9

### Transitional Provisions

**§ 117** After this federal act enters into force, the following transitional provisions shall apply for the purposes of this main part:

1. Any valid admission as an exchange member at the time of the dissolution of the Chamber of the Vienna Stock Exchange or as an exchange trader shall be deemed equivalent to the agreement with the exchange operating company that operates the Vienna Stock Exchange pursuant to § 28 paras 2 and 3 and § 35.
2. Insofar as at the time of dissolution of the Chamber of the Vienna Stock Exchange a negotiable instrument was admitted to a trading procedure, this shall be deemed equivalent to admission by the exchange operating company that operates the Vienna Stock Exchange. The same shall apply to any related official actions taken by the Chamber of the Vienna Stock Exchange in its function as a public authority.
3. (relating to § 61 to § 74)  
The provisions of § 61 to § 74 applicable to the Official Brokers (*Sensale*) appointed to an Austrian securities exchange or a general commodity exchange shall replace the provisions of the federal act on Official Brokers, Federal Law Gazette no 3/1949.
4. An appointment as Official Broker valid at the time of dissolution of the Chamber of the Vienna Stock Exchange shall be deemed equivalent to the appointment by the FMA pursuant to § 61 para 2.
5. The publication decree 2002, Federal Law Gazette II No 112/2002 shall continue to apply as a decree issued by the FMA. Authorizations valid at the time this federal act as amended by Federal Law Gazette I No 97/2001 entered into force shall continue to apply regardless of license and authorization requirements under this federal act.
6. (relating to § 3)  
A license for the operation and management of a securities exchange that was granted before the federal act as amended by Federal Law Gazette I no 60/2007 entered into force shall apply as a license to operate regulated markets after the entry into force of the federal act as amended by Federal Law Gazette I no 60/2007. The Official Market and the Second Regulated Market operated at the time of entry into force of the federal act as amended by Federal Law Gazette I no 60/2007 shall be deemed regulated markets pursuant to § 1 no 2. The unregulated Third Market pursuant to § 69 of the federal act as amended by Federal Law Gazette no 19/2007, as amended, shall be deemed a multilateral trading system upon the entry into force of the federal act as amended by Federal Law Gazette I 60/2007; a license issued by the FMA pursuant to § 3 para 3 shall not be required. Irrespective of the aforementioned provisions, exchange operating companies must observe § 76 para 2 nos 4, 5 and 6 when operating regulated markets and multilateral trading systems.
7. (relating to § 15 Stock Exchange Act as amended by the federal act as amended by Federal Law Gazette I no 60/2007)  
All exchange memberships valid at the time of the entry into force of the federal act as amended by Federal Law Gazette I no 60/2007 shall entitle the members to continue to participate in trading on the regulated markets and multilateral trading facilities operated by the exchange operating company.
8. (relating to the repeal of § 69 Stock Exchange Act as amended by the federal act as amended by Federal Law Gazette I no 19/2007)  
Financial instruments admitted to trading on an unregulated third market at the time of entry into force of the federal act as amended by Federal Law Gazette I no 60/2007 pursuant to § 69 as amended by the federal act as amended by Federal Law Gazette I no 19/2007 may, after the entry into force of the federal act as amended by Federal Law Gazette no 60/2007, continue to be traded on a multilateral trading facility operated by an exchange operating company in continuation of this unregulated third market without requiring a new admission by the exchange operating company. The exchange operating company shall define in its General Terms and Conditions of Business that the legal status of the issuers of such financial

instruments is to remain unaffected and shall correspond to the provisions of § 69 paras 1, 2, 4, 5 and 7 as amended by the federal act as amended by Federal Law Gazette I No 19/2007

9. Financial instruments and issuance programs that up to the time of entry into force of the federal act as amended by Federal Law Gazette I no 107/2017 are admitted to trading on the Second Regulated Market pursuant to § 67 Stock Exchange Act as amended by the federal act as amended by Federal Law Gazette I no 76/2016 shall be transferred to the Official Market pursuant to § 39 and § 40 after entry into force of the federal act as amended by Federal Law Gazette I no 107/2017, provided they meet the requirements of § 38, without requiring a new admission to the Official Market by the exchange operating company. The exchange operating company shall issue a declaratory notice by 15 June 2018 regarding financial instruments and issuance programs that do not meet the requirements of § 38 and publish a notice pursuant to § 39 para 8 to the effect that these instruments and programs shall not be transferred to the Official Market. Upon request of an issuer whose instruments and issuance programs are transferred to the Official Market, the exchange operating company must issue a declaratory notice to this effect. Such requests may be submitted as of 3 January 2018 and the exchange operating company must decide on the matter within ten weeks of receipt.
10. (relating to § 7 para 12, § 28 para 5, § 93, § 95 and § 110 para 6)  
§ 7 para 12, § 28 para 5, § 93, § 95 and § 110 para 6 shall expire effective 25 May 2018 with respect to the obligations for the purposes of data processing to be carried out. Data processing to be carried out for the purposes of these provisions shall be deemed to meet the requirements of Article 35 (10) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No L 119 of 4 May 2016 p. 1 for the omission of a data protection impact assessment.  
§ 7 para 12, § 28 para 5, § 93, § 95 and § 110 para 6 shall not apply with respect to the obligations for the purposes of the data processing to be carried out before 25 May 2018 provided the requirements of the General Data Protection Regulation are complied with.
11. Insofar as – without a mandatory license pursuant to § 84 no 1 – data reporting services pursuant to § 84 to § 90 were, before the time of entry into force of this federal act, provided by data reporting service providers pursuant to § 1 no 63 Securities Supervision Act 2018, the respective data reporting service provider shall be deemed to have been granted a temporary license to provide such services pursuant to § 84 to § 90 at this point in time, if by 2 July 2018 a complete application that is eligible for submittal for licensing is filed for the transactions carried out by such provider, and this license is also subsequently granted. Applications pursuant to § 84 para 1 shall be permitted as of the promulgation of this federal act.
12. (relating to § 38 para 5)  
§ 38 para 5 shall not apply before 1 January 2025 to securities that were already admitted to trading pursuant to § 64 Stock Exchange Act as amended by Federal Law Gazette no 555/1999 or to the Second Regulated Market pursuant to § 67 Stock Exchange Act as amended by Federal Law Gazette 555/1999 at the time of entry into force of this federal act as amended by Federal Law Gazette I no 150/2015.

## **Main Part 2**

### **Transparency Rules and Other Obligations of Issuers**

#### **Section 1**

#### **General Provisions**

#### **Definitions**

**§ 118 (1)** For the purposes of this main part, the following definitions apply:

1. Securities: securities pursuant to § 1 no 13;
2. Debt instruments: debt instrument pursuant to § 1 no 6;
3. Shares: Shares pursuant to § 1 no 7;
4. Issuer: a person/legal entity pursuant to § 1 no 8;
5. Shareholder: a person/legal entity pursuant to § 1 no 9;
6. Controlled undertaking: any undertaking
  - a) for which one person/legal entity has the majority of voting rights, or
  - b) in which one person has the right to appoint or dismiss the majority of the members of the management or supervisory bodies and at the same time is a shareholder or partner of the company concerned; the rights of the owner with respect to agreement, appointment and dismissal shall also comprise the rights of any other company controlled by the shareholder,



- as well as the rights of those persons who act in their own name but on behalf of the shareholder or of any other company controlled by the shareholder, or
- c) in which one person/legal entity is a shareholder or a partner, and under an agreement with other shareholders or partners of the company concerned, holds the majority of the voting rights of the shareholders or partners, or
  - d) in which or over which one person/legal entity may exercise a controlling interest or control or, in fact, does so;
7. Home member state: a member state pursuant to § 1 no 14;
  8. Host member state: a member state pursuant to § 1 no 15;
  9. Regulatory information: all information pursuant to § 1 no 22;
  10. Electronic aids: electronic devices for the processing (including digital compression), storing and transmission of data via cable, radio, optical technologies or other electro-magnetic processes;
  11. Management company: a company in the meaning of Article 2 (1) lit b Directive 2009/65/EC;
  12. Market maker: a person or legal entity pursuant to § 1 no 16;
  13. Credit institution: a company in the meaning of Article 4 (1) No 1 of Regulation (EU) No 575/2013;
  14. Member state: every state that is a member of the European Economic Area;
  15. Person: a natural person or a legal entity including registered private partnerships without legal personality and investment funds pursuant to § 3 para 2 no 30 Investment Fund Act 2011.
  16. Formal agreement: an agreement which is legally binding;
  17. Regulated market: a regulated market pursuant to § 1 no 2.

(2) In accordance with the committee procedures of the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC, the FMA shall define the following by promulgating a decree:

1. The procedures to be followed by an issuer for the selection of the home member state for the purposes of § 118 para 1 no 7;
2. The adaptation of the three-year period in connection with the issuer's business activity to any new provisions under Community legislation regarding the admission to trading on a regulated market, if this is required for the selection of the home member state stated as set out in § 118 para 1 no 7 in conjunction with § 1 no 14 lit a sublit bb, lit b, lit c and lit d;
3. The drafting of an indicative list of the aids for the purposes stated in para 1 no 10 that are not deemed electronic aids but meet the objectives of Annex I of Directive (EU) 2015/1535, OJ No L 241 of 17 September 2015 p. 1.

#### **General Obligations of Issuers**

**§ 119.** (1) Every issuer has the obligation to apply within one year of a new issue of shares of the same type as already quoted on the regulated market for their admission to trading on the exchange. In the case of shares which at the time of issue were not freely negotiable in accordance with § 39 para 3, this period of one year shall begin as soon as they become freely negotiable.

(2) The FMA has the right to extend the obligations of the issuer pursuant to para 1 to other securities by issuing a decree if this is in the interest of investor protection or in the general public interest in functioning exchange trading for the benefit of the national economy. The time limit to be set in the decree for inclusion of the newly issued security in exchange trading may also be shorter than one year.

(3) Every issuer shall maintain for the term of the listing of the securities it has issued on a regulated market a depository and paying agent with a credit institution at the location of the exchange and shall inform the exchange operating company of any change immediately. For securities which are securitized in global certificates, it shall suffice to maintain a depository and paying agent with a credit institution in a member state of the EEA.

(4) An issuer in the meaning of § 18 (7) of Regulation (EU) 596/2014 and all credit institutions in the meaning of § 1 para 1 Banking Act, insurance and reinsurance companies in the meaning of § 1 para 1 no 1 of the Insurance Supervision Act 2016, Federal Law Gazette I no 34/2015, and pension fund schemes in the meaning of § 1 para 1 of the Pension Fund Act, Federal Law Gazette No 281/1990, all as amended, must take the following actions to prevent inside dealings:

1. inform their employees and other persons working for them that the abuse of inside information is prohibited (Article 7 of Regulation (EU) No 596/2014),
2. issue internal directives for the communication of information within the company and monitor compliance, and
3. take organizational measures suitable for preventing the abuse of inside information or its disclosure to third parties.

(5) In accordance with the committee procedures of the European Commission pursuant to Article 27 (2) of Directive 2004/109/EC, the FMA shall define, by promulgating a decree, the technical

conditions under which an annual financial report published pursuant to § 124 including the auditor's opinion must remain available to the public. Furthermore, the FMA shall be empowered to define by decree the basic principles according to which information is to be communicated within the company pursuant to para 4 no 2 and for organizational measures pursuant to no 3. Taking into consideration Part II of the Securities Supervision Act 2018, these principles shall serve to prevent the occurrence of situations pursuant to § 154 to § 156 and § 162 to § 164 and to render such situations verifiable.

(6) Any issuer whose securities have been admitted to the regulated market shall, prior to publication, communicate the facts that must be published pursuant to Article 17 Regulation (EU) No 596/2014 to the FMA and to the exchange operating company. The FMA shall have the right to determine by decree the type of transmission to be used and to prescribe the use of specific means of communication to ensure efficient transmission using state-of-the-art technology for this disclosure and for those pursuant to Article 19 (1), (2) of Regulation (EU) No 596/2014.

(7) The disclosure pursuant to § 124, § 125 para 1, § 126, § 128, § 135, § 138, § 139, Article 17 and Article 19 of Regulation (EU) No 596/2014 as well as the information pursuant to § 118 para 1 no 7 in conjunction with § 1 no 14 lit a sublit bb, lit b, lit c or lit d regarding the home state selected must be done through an electronic information dissemination system that is widely used at least within the European Union. Which information dissemination systems meet these requirements shall be defined in a decree issued by the FMA.

(8) The issuer must disclose the home state pursuant to § 118 para 1 no 7 Stock Exchange Act in conjunction with § 1 no 14 lit a sublit bb, lit b, lit c or lit d selected in compliance with § 122 and § 123. Moreover, the issuer must notify the home member state selected to the competent authority in the state of its registered office or the competent authority of the state selected as home member state as well as to the competent authorities of all member states in which its securities have been admitted to trading.

(9) An issuer of shares and certificates must disclose a report on any stock options granted pursuant to § 95 para 6, § 98 para 3, § 153 para 4, § 159 para 2 no 3 and para 3 and § 171 para 1 last sentence, Stock Corporation Act, within the time periods stated therein in para 7. Likewise, the issuer must immediately disclose the authorization resolution of the general shareholders' meeting pursuant to § 65 para 1 nos 4, 6 and 8 Stock Corporation Act as well as the stock buyback program based on such resolution, immediately before its execution, in particular with respect to its duration. The same shall apply to the sale of own stocks with the exception of sales pursuant to § 65 para 1 no 7 Stock Corporation Act; in such cases, the transactions in which own shares are sold and bought back on and off exchanges shall be disclosed. Disclosure obligations with respect to stock options granted, buyback programs and the selling of own shares shall also apply to issuers that are not subject to the Stock Corporation Act, but for which Austria is the home member state pursuant to § 118 para 1 no 7. The FMA shall, in agreement with the Federal Minister of Justice, be empowered to define the content and form of the disclosures stipulated in this paragraph by issuing a decree; this shall be done taking into consideration the legitimate interests of the issuer and of investors as well as the international standards of developed capital markets. The regulations pertaining to disclosures regarding the transactions conducted, in particular, when fixing the frequency and the time limits for such disclosures, and the impact of such transactions on trading in the relevant shares and certificates shall also be taken into account.

(10) If facts must be disclosed under para 9, this disclosure shall replace the one required under § 65 para 1a second sentence, § 95 para 6, § 98 para 3, § 153 para 4, § 159 para 2 no 3, § 159 para 3, § 171 para 1 last sentence Stock Corporation Act.

(11) All issuers of securities with voting rights whose registered office is in another member state of the EEA shall report to the FMA, the exchange operating company and the Takeover Commission which member states of the EEA is to be responsible for the supervision of the public offerings (§ 27c para 1 no 3 Takeover Act) if the initial admission of the securities to trading is being done simultaneously in Austria as well as in another EEA member state that is not simultaneously the location of the registered office of the issuer. This notification shall be disclosed by publication in the Official Gazette of the newspaper "Wiener Zeitung".

(12) The disclosure and reporting obligations pursuant to § 119 to § 136, § 138 and § 139 shall apply to issuers for whom Austria is the host member state and to shareholders of such issuers pursuant to § 130 and equivalent parties pursuant to § 133, but only to the extent it does not exceed the requirements of Directive 2004/109/EC.

(13) Of the disclosure and reporting obligations pursuant to § 119 to § 136, § 138 and § 139, only § 130 to § 136, § 138 and § 139 shall apply to shares issued by undertakings for collective investment of a type other than the closed-ended type pursuant to Directive 85/611/EEC (UCITs) as well as to shares acquired or sold within the framework of such undertakings.

(14) Securities issued by federal bodies or regional authorities that have been admitted to trading on a regulated market shall be exempt from the application of § 121 paras 2 to 5.

### **Obligations of Issuers of Shares**

**§ 120** (1) An issuer of shares must treat all shareholders that are in the same situation equally.

(2) The issuer shall ensure that all facilities and information that shareholders need to exercise their rights are available in the home member state and the integrity of the data is guaranteed. Shareholders have the right to appoint an authorized representative to exercise their rights provided the laws of the home member state of the issuer are observed. In particular, the issuer must

1. inform of the place, time and agenda of the general meeting as well as of the total number of shares and voting rights, and the rights of shareholders regarding participation in the general meetings;
2. send to every person who has the right to take part and vote at a general meeting, together with the individual notification of the general meeting, if such notification is sent, or upon request after the date has been fixed, a power of attorney form either in paper or if applicable by electronic means;
3. name a credit or a financial institution as authorized body through which shareholders can exercise their financial rights;
4. announce the allotment and payout of dividends and the issuance of new shares as well as changes to the articles of association and rights relating to the allotment, subscription, withdrawal or exchange of shares.

The FMA shall define by decree, in accordance with the committee procedure rules laid down by the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC, through which types of credit or financial institutions shareholders can exercise their financial rights mentioned in no 3.

(3) For the purpose of sending information to shareholders, issuers may use electronic aids if a decision to that effect has been taken by a general meeting and the following conditions are met:

1. The use of the electronic aids does not depend in any way on the seat or place of residence of the shareholder or the persons pursuant to § 133.
2. Measures shall be taken for the identification of persons in order to ensure that the shareholders or the persons exercising the voting rights or who have the right to instruct the exercise of voting rights are actually informed.
3. Shareholders or persons pursuant to § 133 nos 1 to 5 who may acquire, sell or exercise voting rights shall be requested in writing to consent to the use of electronic aids for transmitting information; their consent shall be deemed given if they do not raise objections within an appropriate period. They may request at any later point in time to have the information sent to them again in written form.
4. Any division of the costs incurred due to the transmission of such information by electronic means shall be defined by the issuer in accordance with the principle of equal treatment pursuant to para 1.

(4) The obligations of issuers of shares pursuant to paras 1 to 3 also apply to issuers of participation certificates pursuant to § 23 para 4 Banking Act as amended prior to Federal Law Gazette I no 184/2013 that meet § 26a Banking Act and § 73c para 1 Insurance Supervision Act, Federal Law Gazette no 569/1978 as amended by Federal Law Gazette I no 42/2014 as well as to issuers of securities granting holders profit-sharing rights pursuant to § 174 Stock Corporation Act.

### **Obligations of Issuers of Debt Securities**

**§ 121** (1) An issuer of debt securities must treat all holders of equivalent debt securities equally as regards all rights related to these debt securities.

(2) The issuer shall ensure that all facilities and information that the holders of debt securities need to exercise their rights are publicly available in the home member state and the integrity of the data is guaranteed. Holders of debt securities have the right to appoint an authorized representative to exercise their rights provided the laws of the home member state of the issuer are complied with. In particular, the issuer must

1. inform of the place, time and agenda of the creditors meeting of debt securities holders and of the payment of interest, the exercise of conversion, exchange, subscription or annulment and repayment rights as well as the right to participation of these debt security holders;
2. send to every person who has the right to take part and vote at the creditors meeting of debt securities holders, together with the individual notification of such meeting, if such notification is sent, or upon request after the date has been fixed, a power of attorney form either in paper or if applicable by electronic means;
3. name a credit or a financial institution as authorized body through which the holders of debt securities can exercise their financial rights.

The FMA shall define by decree, in accordance with the committee procedure rules laid down by the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC, through which types

of credit or financial institutions holders of debt securities can exercise their financial rights mentioned in no 3.

(3) If only holders of debt securities with a minimum denomination of EUR 100,000 or — in the case of debt securities denominated in currencies other than the euro — with a minimum denomination that corresponds to EUR 100,000 on the date of issue are invited to a creditors meeting, the issuer may select as venue of the meeting any member state as long as it provides all of the facilities and information needed for the holders of the debt securities to exercise their rights.

(4) The option mentioned in para 3 of being invited to a creditors meeting also applies to holders of debt securities with a minimum denomination of EUR 50,000 or — in the case of debt securities denominated in currencies other than the euro — with a minimum denomination that corresponds to EUR 50,000 on the date of issue, the issuer may select as venue of the meeting any member state as long as it provides all of the facilities and information needed for the holders of the debt securities to exercise their rights.

(5) For the purpose of sending information to debt securities holders, issuers may use electronic aids if a decision to that effect has been taken by a creditors' meeting and the following conditions are met:

1. The use of the electronic aids does not depend in any way on the seat or place of residence of the debt security holder or of the authorized representative.
2. Measures shall be taken for the identification of persons in order to ensure that the holders of debt securities have actually been informed.
3. The holders of debt securities shall be requested in writing to consent to the use of electronic aids for transmitting information; their consent shall be deemed given if they do not raise objections within an appropriate period. They may request at any later point in time to have the information sent to them again in written form.
4. Any division of the costs incurred due to the transmission of such information by electronic means shall be defined by the issuer in accordance with the principle of equal treatment pursuant to para 1.

#### **Language and Third Country Rules**

**§ 122** (1) If the securities have been admitted to trading only on a regulated market in Austria as home member state, the prescribed information must be published in German.

(2) If the securities have been admitted to listing on a regulated market in Austria as home member state as well as on a regulated market in one or several host member states, the required information shall be published

1. in German and
2. at the issuer's choice either in a language accepted by the competent body in the respective host member state or in a language that is commonly used in international financial circles.

(3) If the securities are admitted to trading on a regulated market in one or several host member states, but not in the home member state, the required information shall be published at the choice of the issuer in a language accepted by the competent body of the respective host member state or in a language commonly used in international financial circles.

(4) If the securities are admitted to trading on a regulated market without the consent of the issuer, the obligations pursuant to paras 1 to 3 shall not apply to the issuer, but to the person who has applied for admission without the consent of the issuer.

(5) Shareholders and persons in the meaning of § 130, § 131 and § 133 shall be permitted provide information which it is mandatory for the issuer to provide only in a language commonly used in international financial circles.

(6) By way of derogation from paras 1 to 4, the regulated information shall, at the choice of the issuer or the party who requested admission without the consent of the issuer, be published either in a language accepted by the competent authorities in the home member state and in the host member states or in a language commonly used in international financial circles if securities having a minimum denomination of EUR 100,000 or — in the case of debt securities denominated in a currency other than the euro — with a minimum denomination which corresponds to at least EUR 100,000 on the date of issue are admitted to trading on a regulated market in one or several member states. The derogation pursuant to this paragraph shall also apply to debt securities with a minimum denomination of EUR 50,000 — or in the case of debt securities denominated in a currency other than the euro — with a minimum denomination which corresponds to at least EUR 50,000 and which had been admitted to trading on a regulated market in one or several member states already before 31 December 2010 for as long as such debt securities are outstanding.

(7) If the registered office of an issuer is in a third country, the FMA as competent authority of the home member state may exempt this issuer from the requirements of § 119 to § 121, § 124, § 125, § 126 and § 135, § 138, § 139 insofar as the laws of the respective third country stipulate at least

equivalent requirements or the issuer meets the statutory requirements of a third country that the FMA deems equivalent. The FMA must subsequently inform ESMA of this exemption. The information to be provided pursuant to the laws of the third country must, however, be notified pursuant to § 123 and published in accordance with § 122 and § 123. By way of departure from the above, issuers with their registered office in a third country are exempt from having to prepare their annual financial statements and interim reports pursuant to § 124, § 125 and § 126 prior to the financial year that starts on or after 1 January 2007 on the condition that the issuers prepare their annual financial statements pursuant to International Financial Reporting Standards (IFRS) as adopted by Regulation (EC) No 1606/2002.

(8) The FMA must ensure that information published in a third country that may be of relevance for the public in the European Union is published in addition pursuant to § 122 and § 123. This shall also apply if the information concerned is not the regulated information pursuant to § 118 paras 1 no 9.

(9) Companies with their registered office in a third country that would need an authorization pursuant to Article 5 (1) of Directive 2009/65/EC or an authorization with respect to the management of portfolios pursuant to Section A (4) of Annex I of Directive 2014/65/EU, if they have their registered office or – in the case of investment firms – their head office within the Community shall also be exempt pursuant to § 134 paras 2 and 3 from adding their investments to the investments of their parent company on the condition that they meet equivalent conditions as regards their independence as management firms or investment firms.

(10) In accordance with the committee procedures of the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC, the FMA shall, by promulgating a decree:

1. define procedures that ensure that regulated information, including the financial statements, is ascertained as being equivalent with information as is required under the laws and administrative regulations of a third country, and take measures to establish general equivalency criteria for accounting standards that are of relevance for issuers from more than one country;
2. determine that a third country in which the issuer has its registered office can ensure, based on its legislation and administrative provisions or practices as inspired the international standards defined by international organizations, equivalence with regulated information, and take measures for the evaluation of standards that are of relevance for issuers from more than one country;
3. permit the relevant issuer from a third country whose accounting standards are not equivalent to continue to apply these accounting standards for a reasonable transition period;
4. determine which type of information published in a third country pursuant to para 8 is of relevance to the public in the EU;
5. determine that a third country, based on its legislation and administrative provisions or practices, ensures the equivalence of the requirements as regards independence pursuant to Directive 2004/109/EC and the relevant implementing measures.

#### **Storage System and Powers of Authorities**

**§ 123** (1) Should an issuer or a person who has applied for admission to trading of securities on a regulated market without the consent of the issuer disclose regulated information, such issuer or person shall simultaneously disclose such information, along with proof of disclosure, to the exchange operating company and the FMA as well as to Oesterreichische Kontrollbank (OeKB) for the purpose of storing such information. The FMA may publish this information on its website. The aforementioned obligations shall only apply to issuers whose home member state is Austria and, toward the exchange operating company only if the securities of the issuers are admitted to a regulated market of the exchange operating company.

(2) OeKB must enable access to the storage system also through the European electronic access portal.

(3) In accordance with the committee procedures of the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EEC, the FMA shall promulgate a decree that defines a procedure according to which an issuer, a shareholder or holder other financial instruments or a person in the meaning of § 133 must submit information to the exchange operating company and to the FMA pursuant to para 1 in order to permit such information to be stored with the help of electronic aids.

(4) An issuer or a person who has applied for admission to trading on a regulated market without the consent of the issuer must supply the regulated information in a form that permits swift access to it in a non-discriminatory manner and in the officially approved dissemination system in the meaning of para 5. The issuer or the person who has applied for admission to trading on a regulated market without the consent of the issuer shall not be permitted to charge any fees for access to the information. The issuer must use media that may reasonably be assumed to actually make the information available to the public throughout the entire EU. If securities have been admitted only to trading on a regulated market in Austria as the host member state, but not in the home member state, the FMA must ensure the regulated information is published in accordance with the requirements set out in this paragraph.

(5) OeKB acts as the officially approved system for the central storage of the regulated information. OeKB must guarantee minimum quality standards with respect to data security, certainty regarding the origin of the information, time records and easy access for end users and comply with the procedures for depositing documents pursuant to para 1. OeKB shall be authorized to charge a reasonable fee for its service.

(6) The FMA must ensure the uniform application of paras 4 and 5 in accordance with the committee procedures of the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC taking into account state-of-the-art technology on financial markets as well as developments in information and communications technology by issuing a decree. In particular, it shall define

1. minimum standards for regulated information pursuant to para 4;
2. minimum standards for the central storage system pursuant to para 5.

The FMA may also compile, and update, a list of the media that are used to supply this information to the public.

## **Section 2**

### **Reporting and Disclosure Obligations**

#### **Subsection 1**

#### **Regular Disclosures**

#### **Annual Financial Report**

**§ 124 (1)** An issuer shall disclose its annual financial statements by the latest four months after the close of the financial year and shall ensure that it is available to the public for at least ten years. The annual financial statements shall comprise

1. the audited financial statements;
2. the report of the management board;
3. statements in which the legal representatives of the issuer confirm the following stating their name and function
  - a) that to the best of their knowledge, the financial statements, prepared in accordance with the applicable financial reporting standards, present a true and fair view of the assets, financial position and results of operations of the issuer or of all companies included in the group of consolidated companies;
  - b) that the report of the management board presents the development of business, the earnings or the situation of the companies included in the scope of consolidation in such a manner so as to present a fair and true view of the assets, financial position and results of operations and also describes the major risks and uncertainties to which the companies are exposed.

(2) If the issuer is under the obligation to prepare consolidated financial statements, the audited annual financial statements shall comprise the consolidated financial statements and the annual financial statements of the issuer as the parent company. The auditor's report shall be disclosed in full together with the annual financial statements.

#### **Interim Reports**

**§ 125 (1)** An issuer or a holder of debt securities must publish an interim financial report for the first six months of the financial year without delay, but at the latest three months after expiry of the reporting period, and ensure that the report remains available to the public for at least ten years. The interim financial statements for the first half-year shall comprise:

1. abbreviated financial statements;
2. a report of the management board for the first half-year;
3. statements in which the legal representatives of the issuer confirm the following stating their name and function
  - a) that to the best of their knowledge, these interim financial statements, prepared in accordance with the applicable financial reporting standards, present a true and fair view of the assets, financial position and results of operations of the issuer and of all companies included in the group of consolidated companies;
  - b) that the half-year management report presents a true and fair view of the assets, financial position and results of operations with respect to the information required in para 4.

(2) If the issuer is not under the obligation to prepare consolidated financial statements, the abbreviated financial statements must include at the least an abbreviated balance sheet, an abbreviated income statement as well as explanatory notes to the financial statements. When preparing an abbreviated balance sheet and an abbreviated income statement, the issuer must apply the same

recognition and measurement policies as those used in the preparation of the annual financial statements for the full year. If the issuer is under the obligation to prepare consolidated financial statements, the abbreviated financial statements must be prepared in accordance with IFRS as applicable to interim reports pursuant to Regulation (EU) No 1606/2002.

(3) If the interim financial statements for the first six months of the year have been audited, then the full auditor's report must be included. The same shall apply to the report on the review conducted by an auditor. If the interim financial statements for the first six months of the year are neither fully audited nor reviewed by an auditor, the issuer must state this in the report. The liability of the auditor who conducts a review is governed by § 275 para 2 Business Code, § 62a Banking Act and § 266 Insurance Supervision Act 2016.

(4) The interim management report must discuss as a minimum the most important events in the first half of the financial year and their effects on the abbreviated financial statements; it must furthermore present the main risks and uncertainties for the remaining six months of the financial year. In the interim management reports, issuers of shares must disclose as a minimum the following major related parties' transactions:

1. related parties' transactions that have taken place in the first six months of the current financial year and had material effects on the financial position or the performance of the enterprise during that period;
2. any changes to related parties' transactions described in the last annual report that may have had a material effect on the financial position or performance of the enterprise in the first six months of the current financial year.

Where the issuer of shares is not required to prepare consolidated financial statements, it shall disclose, as a minimum, the related parties' transactions referred to in § 238 (1) No 12 Business Code.

(5) In accordance with the committee procedures of the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC, the FMA shall, by promulgating a decree:

1. specify the technical conditions under which a published half-year financial report, including the report on the review conducted by an auditor, must remain available to the public;
2. clarify the nature of the auditors' review;
3. specify the minimum content of the condensed balance sheet and profit and loss accounts and explanatory notes, where these are not prepared in accordance with the IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002.

**§ 126** If the terms and conditions of business of the exchange operating company state that a regulated market is to be divided into more than one market segment, § 125 paras 1 to 5 shall not conflict with a requirement of the exchange operating company demanding the disclosure of quarterly reports by issuers in the market segment with the most stringent requirements. The content, deadlines and other publication requirements shall be set out in the terms and conditions of business of the exchange operating company. However, such requirements shall not be more stringent than those of International Accounting Standard 34 (IAS 34).

#### **Content of Special Reports**

**§ 127(1)** If the figures reported pursuant to § 125 and § 126 as well as to the FMA decree pursuant to § 125 para 5 on the activities of the issuer do not permit an assessment of the actual situation and of the earnings of the company, the interim report must be supplemented with the corresponding figures.

(2) Credit institutions must report the items presented in the Annex instead of the information specified in § 125 and § 126. The figures shall be calculated based on the latest monthly report and quarterly report in accordance with § 74 Banking Act; if a quarterly report and a monthly report are due at the same time, both shall serve as a basis for the interim report

(3) Insurance companies shall state the premium income from contributions in each insurance class as well as the volume of their life insurance contracts instead of sales revenues and operating results, and in the explanations, they shall also detail insured loss, costs and earnings from investments as components of their results.

#### **Reports on Payments to Government Bodies**

**§ 128** Issuers who prepare annual reports pursuant to § 243d Business Code or which belong to a group of companies that prepare consolidated annual financial statements pursuant to § 267c Business Code, must publish reports on payments made to government bodies by issuers or by company groups belonging to the extractive industries or loggers of primary forests by the latest six months after the close of the financial year and ensure that these reports are available to the public for at least ten years.

## Exemptions from Reporting Obligations

§ 129 (1) § 124, § 125 and § 126 shall not apply to the following issuers:

1. central states, regional authorities, international bodies under public law of which at least one member state is a member, the European Central Bank (ECB) the European Financial Stability Facility (EFSF) under the EFSF framework agreement and any other mechanism created to safeguard the financial stability of the European Monetary Union by providing temporary financial support to member states which use the euro as their currency, and the national central banks of member states irrespective of whether they issue shares or other securities, and
2. issuers that only issue debt securities admitted to trading on a regulated market with a minimum denomination of EUR 100,000 or — for debt securities denominated in a currency other than the euro — with a minimum denomination whose value on the first day of listing equaled at least EUR 100,000.

(2) § 125 para 1 shall not apply to credit institutions whose shares have not been admitted to trading on a regulated market and which have been continually or repeatedly issuing debt securities, on the condition that the total nominal value of the debt securities issued does not exceed EUR 100 million and no prospectus pursuant to Regulation (EU) 2017/1129 has been published.

(3) § 125 para 1 does not apply to issuers which already existed on 31 December 2003 and which issue only debt securities on regulated markets that are unconditionally and irrevocably guaranteed by the home member state or one of its territorial authorities.

(4) By way of derogation from para 1 no 2, § 124, § 125 and § 126 shall not apply to issuers that issue only debt securities with a minimum denomination of EUR 50,000 or — in the case of debt securities denominated in a currency other than the euro — with a minimum denomination which corresponds to at least EUR 50,000 on the issue date and which had been admitted to trading on a regulated market in the European Union already before 31 December 2010, for as long as such debt securities are outstanding.

## Subsection 2

### Disclosures on Investments

#### Changes to Major Investments

§ 130 (1) If persons, directly or indirectly, acquire or sell shares of an issuer admitted to trading on a regulated market, they shall be under the obligation to immediately, but at the latest after two trading days, inform the FMA, the exchange operating company and the issuer of the share of voting rights they will hold after the completion of the acquisition or sale, if, as a consequence of such acquisition or sale, their share in the voting rights reaches, exceeds or falls below 4 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 35 percent, 40 percent, 45 percent, 50 percent, 75 percent and 90 percent. This shall also apply to the thresholds stated by such issuer in its articles of association pursuant to § 27 para 1 no 1 Austrian Takeover Act. The obligations stated above shall apply only with respect to issuers for which Austria is the home member state and vis-à-vis the exchange operating company only if the securities of the issuer have been admitted to listing on a regulated market of the exchange operating company. The period of two trading days shall run as of the day following the day on which the person

1. gains knowledge of the acquisition or sale or of the possibility of exercising voting rights or on which such person ought to have gained knowledge under the circumstances, irrespective of the day on which the acquisition, the sale or the possibility of exercising voting rights takes effect, or
2. has been informed of the event as set out in para 2.

Issuers may additionally define a 3 percent threshold for voting rights as the relevant threshold in their articles of association. A special requirement for such by-law to take effect is its publication on the website of the issuer and notification to the FMA.

(2) The share of voting rights pursuant to para 1 shall be calculated based on the total number of shares with voting rights, also when the exercise of these voting rights is suspended. Moreover, this information shall also be given in respect of all the shares which are in the same class and to which voting rights are attached. A notification obligation for persons pursuant to para 1 shall also apply when the voting rights share of such persons, based on the information disclosed in accordance with § 135 para 1, reaches, exceeds or falls below one of the thresholds mentioned in para 1 due to events that change the distribution of voting rights. Where the issuer is incorporated in a third country, the notification shall be required if equivalent events occur.

(3) Para 1 shall not apply to shares acquired for the sole purpose of clearing and settling transactions within the usual short settlement cycle, or to custodians holding shares in their capacity as custodians, provided such custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means. Para 1 shall not apply to the acquisition or disposal



of a major holding reaching, exceeding or falling below the thresholds of 3 percent, 4 percent, 5 percent or more by a market maker acting in its capacity as a market maker, provided that

1. the market maker is licensed in its home member state pursuant to § 1 no 14, and
2. the market maker does not intervene in the management of the respective issuer and does not exercise any influence on it to buy the relevant shares or to support the share price.

(4) Voting rights that a credit institution or a group of credit institutions or an investment firm might exercise in the trading book pursuant to Article 102 of Regulation (EU) No 575/2013 shall not be counted for the purposes of this paragraph, provided that

1. the share in voting rights held in the trading book is not higher than 5 percent, and
2. the voting rights of shares held in the trading book are not exercised or used otherwise to intervene in the management of the issuer.

(5) Shares with voting rights acquired for the purpose of stabilization pursuant to Article 5 of Regulation (EU) No 596/2014 shall not be counted for the purposes of this paragraph, provided the voting rights granted by these shares are not exercised or used otherwise to intervene in the management of the issuer.

(6) If the acquiring or selling party belongs to a group which must prepare consolidated financial statements, the notification of the company pursuant to para 1 shall be made either by the party acquiring or selling, by its parent company, or by a further higher-ranking company of the group.

(7) The acquisition of a share in a company pursuant to para 1 shall be equivalent to the first listing of the shares of a company on a regulated market.

(8) Where voting rights have to be added or deducted pursuant to § 133, this shall be deemed equivalent to a purchase or sale pursuant to para 1.

#### **Financial Instruments**

**§ 131** (1) The notification obligation pursuant to § 130 shall also apply to persons who directly or indirectly hold financial instruments pursuant to § 1 no 7 Securities Supervision Act 2018 or other similar instruments that

1. grant the holder, upon maturity, within the scope of a formal agreement
  - a) the unconditional right to buy shares with attached voting rights and already issued by an issuer whose shares are admitted to trading on a regulated market, or
  - b) discretion as to the holder's right to acquire the shares,
- or
2. are not subject to no 1 but relate to such shares and have a comparable economic effect as the instruments mentioned in no 1, irrespective of whether or not they grant a right to physical settlement or not.

(2) The number of voting rights pursuant to para 1 shall be calculated based on the full nominal number of the shares underlying the financial instrument unless the financial instrument provides exclusively for cash settlement; in such case, the number of voting rights shall be calculated on a delta-adjusted basis with the nominal number of the underlying shares being multiplied by the delta of the financial instrument. § 130 paras 3, 4 and 6 shall apply.

(3) If different financial instruments from among those named in para 1 refer to shares of the same issuer, the voting rights attached to these shares shall be added up. The calculation of the voting rights shall take into consideration only buy positions which are not offset by sell positions referring to one and the same issuer.

(4) If the right to acquire shares or financial instruments pursuant to para 1 is not defined in the securities themselves, the establishment or expiry of such right shall be deemed to be a purchase or sale in the meaning of this provision. In such cases, the holder, buyer or seller shall be the beneficiary.

(5) The exemptions mentioned in § 130 para 3 and § 134 paras 2 and 3 shall apply accordingly to the notification obligations.

#### **Adding up Voting Rights**

**§ 132** (1) The notification obligations pursuant to § 130, § 131 and § 133 shall also apply to one particular person if the number of voting rights directly or indirectly held by this person pursuant to § 130 and § 133 together with the number of voting rights that relate to directly or indirectly held financial instruments pursuant to § 131 reach, exceed or fall below the thresholds defined in § 130 para 1. The notification must include a breakdown of all voting rights.

(2) The voting rights already notified pursuant to § 131 must be notified again if the total number of voting rights attached to shares of one and the same issuer reaches or exceeds the thresholds set out in § 130 para 1.

### **Determination of the Voting Shares**

**§ 133** The notification obligation pursuant to § 130 paras 1 and 2 shall also apply to persons who are authorized to exercise voting rights in one of more of the following cases:

1. Voting rights from shares held by third parties with whom this person has reached an agreement that imposes the obligation on both parties to pursue a common policy with respect to the management of the relevant listed company by exercising the voting rights in mutual consent;
2. Voting rights attached to shares which this person has assigned to a third party as collateral if the voting rights can be exercised without requiring any explicit instructions by the transferee or if the person can influence the exercise of the voting rights by the transferee;
3. Voting rights from shares under which this person enjoys usufruct rights;
4. Voting rights from shares that belong to a company, or may be attributed it according to nos 1 to 3, in which this person holds a direct or indirect controlling interest (§ 22 paras 2 and 3 Takeover Act);
5. Voting rights held by a third party in their own name for the account of this natural person or legal entity;
6. Voting rights that this person may, acting under ae power of attorney, exercise at his or her own discretion, if no special instructions have been given by the shareholders;
7. Voting rights that are attributable to the person pursuant to § 23 para 1 or 2 Takeover Act.

### **Rules of Procedure**

**§ 134 (1)** The notification pursuant to § 130 in conjunction with § 131, § 132 and § 133 must present a breakdown of all shares, financial instruments or other similar instruments held in the issuer or attributable to the issuer. This also applies to individual notifications even if the holdings have not reached, exceeded or fallen below any of the reporting thresholds stated in § 130 para 1 since submission of the last report. The notification must contain the following information:

1. The number of voting rights and their percentage after the acquisition or sale as well as the threshold thereby reached, exceeded or fallen below;
2. If applicable, the chain of controlled companies through which the voting rights can actually be exercised;
3. The date on which the holdings reach, exceed or fall below the threshold;
4. The name of the shareholder, even if the shareholder is not authorized to exercise voting rights under the terms of § 133, and of the person authorized to exercise voting rights in the name of said shareholder;
5. In the case of § 131, the number of shares to which the financial instruments relate, a breakdown of the individual instruments contained, as well as an indication of the time or period at or during which the shares are acquired or can be acquired, and in the case of § 131 para 1 no 2, the maturity of the financial instrument;
6. In the case of holdings according to § 130 and § 131, a detailed breakdown of the respective holdings;

(2) The parent company of a management company shall not be obligated to aggregate the holdings pursuant to § 130 and § 133 with the holdings managed by the management company in accordance with Directive 2009/65/EC if the management company exercises its voting rights independently of the parent company. However, § 130 and § 133 shall apply if the parent company or another company controlled by the parent company holds shares in the investment managed by said management company and the management company cannot exercise the voting rights relating to these investments at its own discretion, but only upon direct or indirect instructions issued by its parent company or another company controlled by the parent company.

(3) The parent company of an investment firm licensed pursuant to the Securities Supervision Act 2018 shall not be obligated to aggregate its holdings pursuant to § 130 and § 133 with the holdings managed by the investment firm on a client-by-client basis in the meaning of § 1 no 3 lit d Securities Supervision Act 2018, provided

1. the investment firm has been authorized to provide portfolio management services pursuant to Annex I Section A no 4 of Directive 2014/65/EU;
2. it may exercise the voting rights attached to the shares only if instructed in writing or via electronic aids or takes precautions to ensure that the individual portfolio management is conducted independently of other services and under conditions equivalent to those defined in Directive 2009/65/EC;
3. the investment firm exercises its voting rights independently of the parent company.

However, § 130 and § 133 shall apply if the parent company or another company controlled by the parent company holds shares in the investment managed by said investment firm and the investment firm cannot exercise the voting rights relating to these investments at its own discretion, but only upon

direct or indirect instructions issued by its parent company or another company controlled by the parent company.

(4) § 130 and § 133 no 3 shall not apply to shares made by or to the members of the European System of Central Bank (ESCB) in the exercise of their duties as monetary authorities; this shall include shares that members of the ESCB deposit as collateral or within the scope of securities repurchase agreements or similar agreements in exchange for liquidity for monetary policy purposes or that are made available to or by them within a transfer of payments system. For the exemption to apply, the transactions mentioned must be short-term transactions and the voting rights attached to such shares must not be exercised.

(5) The FMA is authorized to issue decrees specifying in more detail the content, type, language, scope and form of the notifications pursuant § 130 to § 133. This shall be done taking into consideration the legitimate interests of the issuers and of investors as well as the international standards of developed capital markets. As regards the type of transmission, the FMA may determine specific types of communication technologies to ensure swift transmission taking into account state-of-the-art technology.

#### **Additional Information**

**§ 135** (1) For the purposes of calculating the thresholds pursuant to § 130, the issuer shall disclose the total number of voting rights and the capital at the end of every calendar month in which there has been an increase or reduction of voting rights or capital.

(2) As soon as the issuer receives the notification pursuant to § 134a para 1, but at the latest two trading day after receipt, the issuer must disclose all of the information contained in the notification.

(3) Should an issuer of shares acquire or sell own shares itself or through a person acting in its own name but for the account of the issuer, the issuer shall disclose the percentage of own shares immediately, but at the latest two trading days after the acquisition or sale, if these shares reach, exceed or fall below the threshold of 5 percent or 10 percent of voting rights. The percentage shall be calculated based on the total number of shares with attached voting rights.

#### **Equivalence of Information**

**§ 136** In accordance with the committee procedure rules defined by the European Commission pursuant to Article 27 (2) to (2c) of Directive 2004/109/EC, the FMA shall issue decrees that

1. specify the events stated in § 130 para 2, if applicable, in an exhaustive list;
2. define the types of financial instruments and their aggregation, the type of formal agreement, the content of the notifications, the notification period and the addressees of the notification pursuant to § 131;
3. create a calendar of “trading days” for all member states;
4. define in which cases the shareholder or the person in the meaning of § 133 or both must make the required notification to the issuer;
5. specify under which circumstances the shareholder or person in the meaning of § 133 ought to have gained knowledge of the acquisition or sale;
6. define under which circumstances a management company shall be deemed independent of its parent company and an investment firm independent of its parent company so it can claim the exemption under § 134 paras 2 and 3;
7. standardize the implementing measures regarding the publication of any acquisition of own shares pursuant to § 135 para 3.

#### **Suspension of Voting Rights**

**§ 137** (1) Should a person fail to meet the reporting obligation pursuant to §§ 130 to 133, all voting rights in the issuer that belong to this person or are attributable to this person pursuant to § 133 shall be suspended, to the extent of the difference between the new percentage of voting rights and the last percentage of voting rights reported by said person. The voting rights may be exercised again after a period of six months after the reporting obligation has been complied with.

(2) Should a person, despite the breach of the reporting obligation pursuant to para 1, submit the report according to §§ 130 to 133 late, but within two trading days, also if by request of the issuer, the legal consequence pursuant to para 1 shall not take effect if the total share in the issuer held by the person subject to the reporting obligation is less than 15 percent and the number of shares with voting rights not reported is less than 3 percent.

### **Subsection 3**

#### **Other Disclosure Obligations**

**§ 138** An issuer of shares shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.

**§ 139** An issuer of securities other than shares shall make public without delay any changes in the rights of holders of such securities other than shares, including changes to the terms and conditions of these securities which could indirectly affect those rights, resulting, in particular, from a change in bond terms or in interest rates.

### **Section 3**

#### **Supervisory Powers**

#### **Powers of Authorities**

**§ 140** (1) The FMA shall be authorized, within the scope of its supervisory function, to supervise compliance with the provisions pursuant to § 119 to § 136, § 138 and § 139 as well as with decrees issued pursuant to this federal act or pursuant to delegated regulations issued under Directive 2004/109/EC or pursuant to regulatory technical standards of relevance for the competent supervisory authority having oversight over issuers in the meaning of Articles 10 to 12 of Regulation (EU) No 1095/2010, to

1. require auditors, issuers, holders of shares or other financial instruments, or persons or entities referred to in § 131 and § 133, and persons that control them or are controlled by them, to provide information and documents;
2. require issuers to disclose the information required under no 1 to the public by the means and within the time limits the authority considers necessary; it may publish such information on its own initiative in the event that the issuer or the persons that control it or are controlled by it fail to do so and after having heard the issuer;
3. require managers of the issuer and of the holders of shares or other financial instruments or persons or entities referred to in § 131 and § 133 to notify the information required under § 119 to § 136, § 138, § 139, and if necessary, to provide further information and documents;
4. suspend, or request the relevant regulated market to suspend, trading in securities for a maximum of ten consecutive days if it has reasonable grounds for suspecting that the provisions of § 119 to § 136, § 138, § 139 have been infringed by the issuer;
5. prohibit trading on a regulated market if it finds that the provisions of § 119 to § 136, § 138, § 139 have been infringed, or if it has reasonable grounds for suspecting that the provisions have been infringed;
6. monitor that the issuer discloses the information in a timely manner with the objective of ensuring effective and equal access by the public in all member states where the securities are traded and take appropriate action if that is not the case;
7. make public the fact that an issuer, or a holder of shares or other financial instruments, or a natural person or entity referred to in § 131 and § 133 fails to comply with their obligations, provided this disclosure does not pose a major risk to the stability of the financial markets or cause unreasonable damage to the parties affected;
8. conduct ex post audits on site in order to check compliance with § 119 to § 121 and the measures taken to implement them;
9. issue an order requiring the natural person or the legal entity responsible to cease the conduct constituting the breach, to reinstate a lawful situation and to desist from any repetition of such conduct;

§ 92 para 2 second and third sentence shall apply.

(2) The disclosure to competent authorities by the auditors of any fact or decision related to the requests made by the competent authority under para 1 no 1 shall not constitute a breach of any restriction on the disclosure of information imposed by contract or by any law, regulation or administrative provision and shall not give rise to liability of any kind for such auditors.

(3) The FMA must collaborate with the competent bodies of other member states insofar as this is required for it to fulfil its tasks pursuant to § 119 to § 136, § 138, § 139 and § 140. The FMA shall render assistance to competent authorities of other member states. The official secrecy regulations shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject. The FMA is authorized to notify ESMA of situations where a request for cooperation has been rejected or has not been acted upon within a reasonable time. The FMA must cooperate with ESMA pursuant to Regulation (EU) No 1095/2010 for the purposes of § 1, § 3 para 2, § 119 to § 136, § 138, § 139, § 140. Pursuant to Article 35 of Regulation (EU) No 1095/2010, the FMA must make available to ESMA all information it requires to exercise its supervisory tasks as set out in § 1, § 3 para 2, § 119 to § 136, § 138, § 139, § 140 and in the aforementioned Regulation. The obligation to maintain official secrecy shall not prevent the FMA from exchanging confidential information with or sending information to ESMA or to the European Systemic Risk Board established by Regulation (EU) No 1092/2010.

(4) If the FMA as the competent authority of the host member state finds that the issuer or the holder of shares or other financial instruments or the natural person or entity referred to in § 133 has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home member state and ESMA. If, despite the measures taken by the competent authority of the home member state, the issuer or the security holder persists in infringing the relevant regulatory provisions, the FMA shall, after informing the competent authority of the home member state, take all appropriate measures necessary to protect investors in accordance with § 119 para 12. The FMA shall inform the European Commission and ESMA of such measures at the earliest opportunity.

## **Section 4**

### **Sanctions**

#### **Penal Provisions**

##### **§ 141** Anyone who

1. fails to comply or fails to comply in a timely manner with a disclosure obligation pursuant to § 124, § 125 paras 1 to 4 or § 128 or pursuant to a decree issued by the FMA on the basis of § 119 para 6 first sentence or § 125 para 5, or
2. fails to comply or fails to comply in a timely manner with a notification obligation to issuers or with a disclosure obligation pursuant to § 130 paras 1 to 3 and 5, § 131, § 132, § 133, § 134 or § 135 paras 2 and 3 or § 138 or § 139 or fails to comply or to comply in a timely manner with a decree issued by the FMA based on § 136,

or violates any related obligations pursuant to delegated acts and implementing regulations adopted on the basis of Directive 2004/109/EC shall be deemed to have committed an administrative offense and shall be sanctioned by the FMA with a fine of up to EUR 2 million or up to two times the pecuniary benefit gained from the violation, whichever amount is higher, provided the benefit gained can be quantified.

**§ 142** (1) The FMA may impose a fine on a legal entity if persons, who, either acting alone or as a member of a governing body of the legal entity and who discharge managerial tasks within the legal entity based on

1. an authorization to represent the legal entity,
2. an authorization to reach decisions in the name of the legal entity, or
3. having controlling power within a legal entity

fail to meet the obligations stated in § 141.

(2) Legal entities may also be held accountable for non-compliance with the obligations stated in § 141 if insufficient surveillance or control by a person named in para 1 has enabled such non-compliance by a person working for the legal entity.

(3) The fine pursuant to paras 1 and 2 shall be up to EUR ten million or 5 percent of the total annual revenues pursuant to § 109 or up to two times the pecuniary benefit gained from the infringement insofar as this can be quantified.

**§ 143** In the case of credit institutions, the total annual net revenues pursuant to §142 para 3 shall be the sum total of all amounts listed in nos 1 to 7 of Annex 2 of § 43 Banking Act less the expenses listed there; if the company is a subsidiary, the total annual net revenues reported in the consolidated financial statements of the parent company in the preceding financial year shall be used as basis. In the case of other legal entities, the total annual revenues shall be the relevant measure. If the FMA cannot determine or calculate the basis for the total annual revenues, it shall estimate such revenues. All circumstances of relevance for the estimate must be taken into account.

**§ 144** The FMA must take the circumstances listed below into account, insofar as applicable, when determining the type of sanction or measures to be imposed due to violations of the provisions of this federal act or of violations of provisions of decrees or official notices issued on the basis of this federal act as well as when measuring the amount of a fine:

1. the gravity and the duration of the violation;
2. the degree of responsibility of the natural persons or legal entities responsible;
3. the financial capacity of the natural person or legal entity measured, for example, on the basis of total revenues of the legal entity responsible or the annual revenues of the natural person responsible;
4. the amount of the profit or of loss avoided by the natural person or legal entity provided the amount can be quantified;
5. the loss incurred by a third party due to the infringement, provided the amount can be quantified;
6. the loss incurred due to the damage caused to the functioning of the markets or the economy in general, provided the amount can be quantified;

7. the willingness of the natural person or legal entity responsible to cooperate with the competent authority;
8. previous infringements by the natural person or legal entity responsible, and
9. measures taken after the infringement by the natural person or legal entity responsible to prevent a repeat of such infringement.

The provisions of the Administrative Offenses Act shall not be affected by these points. The money from fines imposed by the FMA pursuant to § 141, § 142 and § 143 goes to the federal government.

**§ 145** (1) Fines imposed on natural persons and legal entities for violations of the obligations stated in § 141 or for violations of § 119 para 7, § 122, § 123 para 1 or 3 or § 135 para 1 or pursuant to a decree issued by the FMA based on § 119 para 8 or § 123 para 2 or 5 must be published on the internet without delay by the FMA including the identity of the parties concerned and information on the type and nature of the violation committed as well as any legal recourse taken, if applicable. If an official notice is appealed after publication, the FMA must modify the official notice accordingly.

(2) The disclosure pursuant to para 1 shall be anonymous if said disclosure would

1. be unreasonable for a natural person or legal entity being sanctioned or
2. pose a threat to the stability of the financial markets in one or more member state of the European Union, or
3. jeopardize an ongoing criminal investigation.
4. cause excessive loss or damage to the parties involved, provide such loss or damage can be ascertained.

If there are grounds for anonymous publication pursuant to nos 1 to 4, but it may be assumed that these reasons will no cease to exist in the foreseeable future, the FMA may refrain from anonymous publication and publish the sanctions after the grounds cease to exist pursuant to nos 1 to 4 and also pursuant to para 1.

(3) The party affected by the publication of information may request the FMA to review the lawfulness of the publication pursuant to para 1 or para 2 in proceedings which are concluded by a final decision in the form of an official notice. In this case, the FMA shall announce the initiation of such proceedings in the same manner. If the outcome of the review ascertains the unlawfulness of the publication, the FMA shall correct the publication, or, upon request of the party, publish a statement retracting it or remove it from the website. Should an objection filed against an official notice which was published pursuant to para 1 or para 2 be granted with a suspensory effect in proceedings before a court of public law, the FMA shall disclose this information in the same manner. The disclosure must be corrected, or, upon request of the party affected, be either revoked or removed from the internet when the official notice is repealed.

(4) If the publication pursuant to para 1 or para 2 is not to be retracted or removed from the website based on a decision pursuant to para 3, the FMA must keep the publication on its website for at least five years. However, personal data may remain published on said website only as long as none of the criteria pursuant to para 2 nos 1 to 4 is met.

#### **European Cooperation**

**§ 146** When exercising its powers to impose sanctions pursuant to § 107 para 1 nos 6 and 9, and § 141 to § 143, the FMA shall work closely together with the competent authorities of other member states to ensure that the supervisory and investigative actions as well as administrative sanctions can be ordered or imposed effectively. The FMA shall coordinate its measures with the competent authorities of the other member states in order to avoid redundant work and overlaps in cases in which the FMA must exercise its supervisory and investigative powers across borders and imposes administrative sanctions and measures in this context.

### **Section 5**

#### **Procedural Provisions**

**§ 147** The exchange operating company shall apply the General Rules of Administrative Procedure for all procedural matters relating to the exercise of its function as official authority.

**§ 148** (1) In the case of onsite investigations pursuant to § 140 para 1, all official persons conducting the investigation must have a written order authorizing the investigation and must identify themselves before the start of the investigation and show the investigation order. Furthermore, § 71 paras 1 to 4 Banking Act shall apply.

**§ 149** The FMA is the competent authority of first instance for imposing administrative fines pursuant to § 141 to § 143.

**Section 6**  
**Transitional Provisions**

**§ 150** After this federal act enters into force, the following transitional provisions shall apply:

1. (relating to § 124)

As of 1 January 2020, all annual financial statements pursuant to § 124 must be prepared in a uniform electronic reporting format, provided the FMA has disclosed on its website that ESMA has completed the costs-benefits analysis to be conducted pursuant to Article 4 (7) Directive 2013/50/EU.

2. (relating to § 121 and § 145 para 4)

§ 121 and § 145 para 4 shall expire with respect to the obligations for the purposes of the data processing to be carried out by 25 May 2018. Data processing to be carried out for the purposes of these provisions shall be deemed to meet the requirements of Article 35 (10) of Regulation (EU) 2016/679 for the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No L 119 of 4 May 2016 page 1 for the omission of a data protection impact assessment.

§ 121 and § 145 para 4 shall not apply with respect to the obligations for the purposes of the data processing to be carried out before 25 May 2018, provided the requirements of the General Data Protection Regulation are complied with.

**Main Part 3**  
**Market Abuse**

**Section 1**  
**General Provisions**

**Definitions**

**§ 151** For the purposes of § 163 to § 173, the following definitions shall apply:

1. Repurchase program: trading in own shares pursuant to Articles 21 to 27 of Directive 2012/30/EU for the coordination of the provisions for the protection of the interests of members and others, required of companies in member states within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and changes to their capital, with a view to making such safeguards equivalent, OJ No L 315 of 14 November 2012 page 74;
2. Emission allowances: emission allowances in the meaning of Annex I Section C (11) of Directive 2014/65/EU;
3. Regulated market: a regulated market in the meaning of Article 4 (1) No 21 of Directive 2014/65/EU;
4. Multilateral trading facility (MTF): a multilateral trading system in the meaning of Article 4 (1) No 22 of Directive 2014/65/EU;
5. Organized trading system (OTF): an organized trading system in the meaning of Article 4 (1) No 23 of Directive 2014/65/EU;
6. Trading venue: a trading venue in the meaning of Article 4 (1) No 24 of Directive 2014/65/EU;
7. Wholesale energy product: a wholesale energy product in the meaning of Article 2 no 4 of Regulation (EU) No 1227/2011 on the Integrity and Transparency of the wholesale energy market, OJ No L 326 of 8 December 2011 page 1;
8. Issuer: an issuer in the meaning of Article 3 (1) No 21 of Regulation (EU) 596/2014;

**Section 2**  
**Supervisory Powers**  
**Competent Authority**

**§ 152** Notwithstanding the jurisdiction of the regular courts of law, the FMA shall be the competent authority for the purposes of Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ No L 173 of 12 June 2014, page 1. The FMA must notify the Commission, ESMA and the other competent bodies of the other member states of this fact. The FMA must ensure the application of the provisions of this Regulation within Austria and to all actions carried out in Austria and outside Austria relating to instruments admitted to trading on a regulated market or for which an application for admission to trading on such a market has been submitted, which were auctioned through an auction platform or are

traded on a multilateral trading system or an organized trading system or for which inclusion in trading on a multilateral trading system in Austria has been applied for.

#### **Powers of the Competent Authority**

**§ 153 (1)** For the purpose of executing its tasks under Regulation (EU) 596/2014, the FMA shall, notwithstanding its powers pursuant to the other procedural provisions, be endowed with the following special powers of supervision and investigation:

1. to inspect all types of documents and data in any form whatsoever and to receive or make copies thereof;
2. to request information from any person, including persons who are involved in successive order in the transmission of orders or in the execution of the respective actions, as well as to request or demand information from their principals, and, if necessary, to summon such a person to appear and be interviewed;
3. with respect to commodity derivatives pursuant to Article 2 (1) No 30 of Regulation No 600/2014, to request information in standardized formats from participants of the respective spot markets, obtain reports on transactions and to directly access the traders' systems;
4. to conduct onsite inspections and investigations at locations other than the private residences of natural persons using its own auditors, persons retained by the FMA to provide official assistance, or other official experts;
5. to refer a case for further criminal investigation;
6. to demand existing records of telephone conversations or electronic messages or data transmission records from investment firms, investment service providers pursuant to § 4 Securities Supervision Act 2018, credit institutions and from financial institutions;
7. to freeze or confiscate assets provided this is required to secure the forfeiture of the assets, applying § 157 para 3, first sentence;
8. to suspend trading in the relevant financial instruments pursuant to Annex I Section C of Directive 2014/65/EU;
9. to order the temporary suspension of actions which, pursuant to the interpretation of the FMA, violate Regulation (EU) No 596/2014;
10. to temporarily prohibit a person from exercising his or her occupation or profession.
11. to take all measures required to ensure that the public is properly informed, among other things, by correcting any false or misleading information having been disclosed, including the right to order the issuer or other persons who have disseminated false or misleading information to publish a corrigendum.

(2) Searches of premises protected by the right to grant or forbid entrance (§ 117 no 2 lit b Code of Criminal Procedure) shall be permitted upon request of the FMA, if there is a founded suspicion of acts being committed in violation of § 154 or § 155 para 1 no 2, and, if based on certain facts it may be assumed that objects are stored there which have to be confiscated.

(3) Providing information on the data of a relating to communications (§ 134 no 2 Code of Criminal Procedure including the data specified in § 76a Code of Criminal Procedure) shall be permitted upon request of the FMA, if there is a founded suspicion of acts being committed in violation of § 154 (except in the case of infringements of Articles 10 and 14. lit c of Regulation (EU) No 596/2014) or § 155 para 1 no 2, and, if it may be expected that this would be beneficial for the investigation of the infringement, and, if based on certain facts, it may be assumed that this would facilitate the investigation of data of the defendant.

(4) The Regional Court for Criminal Matters of Vienna (*Landesgericht für Strafsachen Wien*) shall, upon application by the FMA pursuant to para 2 or 3, reach an official decision handed down by an individual judge (§ 86 Code of Criminal Procedure), with due consideration of the principle of lawfulness and proportionality pursuant to § 5 Code of Criminal Procedure must be observed. The FMA must state the grounds for such application (§ 102 para 2 nos 2 to 4; applications made pursuant to para 3 shall moreover contain the information specified in § 138 para 1 nos 1, 3 and 4 Code of Criminal Procedure) and hand it over to the court including all records.

5) Insofar as required for legal or factual reasons for the court to reach a decision on an application filed by the FMA, the court may order the FMA to conduct further investigations or request the FMA to present factual explanations based on the records. If and when the court grants approval for the application, it shall define a period of execution, and if said period expires fruitlessly, the approval shall expire. The FMA shall decide on execution. If the conditions under which the application was granted cease to exist or change to an extent that execution becomes unlawful, non-proportional or fails to fulfil the purpose, the FMA must abstain from it and notify the court thereof.

(6) The decision may be appealed by the FMA, the defendant and any other person affected in his or her subjective rights by this decision, the only legal recourse being an objection to be filed with the Higher Regional Court of Vienna (*Oberlandesgericht Wien*). The FMA also has the right to file an



objection if its application has not been dealt with. The provisions of § 87 to § 89 Code of Criminal Procedure shall apply mutatis mutandis to objections and the proceedings on objections, with the Public Prosecutor's Office being replaced by the FMA. If an objection filed for inadmissibility of an investigative measure under para 3 is granted pursuant to § 89 para 2b Code of Criminal Procedure, the further course of procedure to be followed is specified in § 89 para 4 Code of Criminal Procedure.

(7) Searches of premises (para 2) shall be subject to the provisions of § 121 and § 144 Code of Criminal Procedure. For searches of premises, the FMA shall have the powers specified para 1 no 1. Furthermore, the FMA may request any and all information it needs for carrying out investigations directly onsite and may demand that all representatives or employees of the company or the group of companies provide explanations on the facts of the matter or supply documents that are related to the object and purpose of the investigation. The FMA shall have the right to seal all premises to the extent necessary and to confiscate evidence if this is necessary to secure the success of the investigation. If objects are found in the course of a search that permit the conclusion to be drawn that a different criminal act has been committed than the one which is the reason for the search, the FMA may also confiscate such objects if this is necessary to secure the success of the investigation. In the event an objection is raised by invoking a legally recognized right to maintain secrecy vis-à-vis the FMA, the provisions of § 112 Code of Criminal Procedure shall apply accordingly, with the Public Prosecutor's Office being replaced by the FMA. The FMA must hand over the search warrant to the person at whose premises the search is to be conducted (affected party) at the time the search is carried out or within 24 hours thereafter.

(8) With respect to providing information on data transmissions (para 3), the provisions of § 137 para 3, § 138 paras 2 to 4 and § 139 paras 1, 2 and 4 and § 144 Code of Criminal Procedure shall apply accordingly, with the Public Prosecutor's Office being replaced by the FMA. The party being requested to provide information must make it available immediately and free of charge. After the information has been supplied, the FMA must immediately serve the order to the party affected granting approval to provide the information. However, serving the order may be postponed if this would pose a risk to the purpose of this investigation or to other proceedings, and such postponement is necessary and reasonable. Data relating to message transmission shall be permitted to be used as evidence only if the investigative measure pursuant to para 3 was lawfully approved. The data may be used only as evidence of criminal acts relating to the investigative measure for which a permit was granted, for a different criminal act as set out in § 154, § 155 para 1 no 2, § 163 and § 164 or for a criminal act for which it would have been possible to order an investigative measure pursuant to § 135 para 2 nos 3 or 4 Code of Criminal Procedure.

(9) The members of the public security forces (police) shall support the FMA, upon its request, in securing searches within the scope of their legal mandate to act. Within the course of a search conducted by the FMA, the assisting police officers shall also be authorized to assist the FMA in securing documents in electronic form.

(10) The provisions of this federal act shall not be affected by the provisions of 12th Section of the Telecommunications Act 2003 – TCA 2003, Federal Law Gazette I no 70/2003.

### **Section 3**

#### **Administrative Measures to Combat Market Abuse**

##### **Administrative Offenses Relating to the Abuse of Inside Information and Market Manipulation**

**§ 154** (1) Anyone who infringes

1. Article 14 lit a of Regulation (EU) No 596/2014 by engaging inside dealings pursuant to Article 8 (1) or (3) of Regulation (EU) No 596/2014,
2. Article 14 lit b or c of Regulation (EU) No 596/2014 by recommending that another person engage in inside dealings pursuant to Article 8 (2) of Regulation (EU) No 596/2014 in violation of Article 9 of Regulation (EU) No 596/2014 or who induce another person to engage in inside dealing or unlawfully discloses inside information pursuant to Article 10 of Regulation (EU) No 596/2014, or
3. Article 15 of Regulation (EU) 596/2014 by engaging in market manipulation by either entering into a transaction or placing, cancelling or modifying orders to trade pursuant to Article 12 (1) lit a or b of Regulation (EU) 596/2014, or, in violation of Article 12 (1) lit c or d of Regulation (EU) 596/2014, gives or makes available false or misleading inputs or disseminates information that sends out false or misleading signals,

shall be deemed to have committed an administrative offense and shall be sanctioned by the FMA with a fine of up to EUR 5 million or up to three times the pecuniary benefit gained from the infringement including any loss avoided, provided the benefit gained can be quantified.

(2) If an act described in para 1 nos 1 and 3 is committed by willful intent, such attempt shall be punishable by law.

## Other Administrative Offenses

### § 155 (1) Anyone who

1. fails to comply with organizational requirements or with the notification, disclosure or reporting obligations for the prevention and detection of market abuse pursuant to Article 16 of Regulation (EU) No 596/2014 or violates the related obligations pursuant to the regulatory technical standards issued on the basis of Article 16 (5) of Regulation (EU) 596/2014;
2. fails to comply with the obligations to disclose inside information pursuant to Article 17 of Regulation (EU) No 596/2014 or who violates the related obligations pursuant to the implementing technical standards issued on the basis of Article 17 (10) of Regulation (EU) 596/2014;
3. fails to comply with the obligations with respect to the insider lists pursuant to Article 18 of Regulation (EU) No 596/2014 or violates the related obligations pursuant to the implementing technical standards issued on the basis of Article 18 (9) of Regulation (EU) 596/2014;
4. fails to comply with the obligations with respect to managers' transactions pursuant to Article 19 of Regulation (EU) No 596/2014 or violates the related obligations pursuant to the implementing technical standards issued on the basis of Article 19 (15) of Regulation (EU) 596/2014;
5. contrary to Article 20 para 1 of Regulation (EU) 596/2014 or the implementing technical standards issued on the basis of Article 20 (3) of Regulation (EU) No 596/2014, gives investment recommendations or provides, prepares or disseminates other information by which an investment strategy is recommended or suggested,

shall be deemed to have committed a violation of administrative law and shall be sanctioned by the FMA with a fine up to three times the benefit gained from the violation including any loss avoided, provided the pecuniary benefit can be quantified, or, with respect to nos 1 and 2, with a fine of up to EUR 1 million, or, with respect to nos 3 to 5, with a fine of up to EUR 500,000.

(2) The FMA may refrain from imposing sanctions pursuant to para 1 no 4 on the issuer,

1. if the issuer can furnish proof that the party subject to the notification obligation pursuant to Article 19 (1) of Regulation (EU) 596/2014 sent the notification pursuant to Article 19 subparagraph 1 of Regulation (EU) 596/2014 so late to the issuer that it was not possible for the issuer to report the information to the FMA within the period defined in Article 19 subparagraph 2 of Regulation (EU) 596/2014, and
2. if the issuer makes the information public on the business day following receipt of the information.

(3) The FMA has the authority, by issuing a decree, to raise the threshold defined in Article 19 (8) of Regulation (EU) 596/2014 based on the powers granted by Article 19 (9) of Regulation (EU) No 596/2014 to EUR 20,000, if such action serves to simplify administration and meets the purpose of satisfying investors' need for information,

(4) When the publication of inside information is delayed pursuant to Article 17 (4) of Regulation (EU) 569/2014, the issuer must notify the FMA of the delay immediately after disclosure of the inside information and, upon request, explain to the FMA in writing the extent to which the prerequisites for the delay were met.

## Criminal Liability of Legal Entities

§ 156 (1) The FMA may impose a fine on a legal entity when persons, who, either acting alone or as a member of a governing body of the legal entity and who discharge managerial tasks within the legal entity based on

1. an authorization to represent the legal entity,
2. an authorization to reach decisions in the name of the legal entity, or
3. having a controlling power within a legal entity

have violated one of the prohibitions or obligations pursuant to § 154 and § 155.

(2) Legal entities may also be held accountable for the infringements stated in para 1, if insufficient surveillance or controls by a person named in para 1 has enabled such infringement by a person working for the legal entity.

(3) The amount of the fine pursuant to paras 1 and 2 shall be

1. in the case of infringements of the prohibitions or obligations defined in Articles 14 and 15 of Regulation (EU) No 596/2014, up to EUR 15 million or 15 percent of the total annual net revenues pursuant to para 4 or up to three times the amount of the pecuniary benefit gained taking into account any loss avoided, provided the benefit can be quantified;
2. in the case of infringements of the prohibitions or obligations defined in Articles 16 and 17 of Regulation (EU) No 596/2014, up to EUR 2,500,000 or 2 percent of the total annual net

revenues pursuant to para 4 or up to three times the amount of the pecuniary benefit gained taking into account any loss avoided, provided such benefit can be quantified;

3. in the case of infringements of the prohibitions or obligations defined in Articles 18 to 20 of Regulation (EU) No 596/2014, up to EUR 1 million or up to three times the amount of the pecuniary benefit gained taking into account any loss avoided, provided such benefit can be quantified.

(4) In the case of credit institutions, the total annual net revenues pursuant shall be the sum total of all amounts listed in nos 1 to 7 in Annex 2, Part 2, of § 43 Banking Act less the expenses listed there; if the company is a subsidiary, the total annual net revenues reported in the consolidated financial statements of the parent company in the preceding financial year shall be used as basis. In the case of other legal entities, the total annual revenues shall be the relevant measure. If the FMA cannot determine or calculate the basis for the total annual revenues, it shall estimate such revenues. All circumstances of relevance for the estimate must be taken into account.

#### **Other Administrative Measures**

**§ 157** (1) The FMA must inform the Commission and ESMA in detail about the provisions set out in § 154, § 155 und § 156 and inform it immediately of any subsequent amendments to these provisions.

(2) In the case of infringements of § 154, § 155 and § 156, the FMA is empowered to impose the administrative sanctions set out below irrespective of any other powers it has under other administrative provisions:

1. Issue an order instructing the person responsible for the infringement to cease such behavior and refrain from repeating it;
2. Issue an order according to which any profits earned or losses avoided are declared forfeited, provided these can be quantified;
3. Issue a public warning regarding the person responsible for the infringement and the type of infringement;
4. Withdraw or suspend the admission of a legal entity pursuant to § 26 Securities Supervision Act 2018, if it is not possible to prevent infringements of § 154, § 155 and § 156 with a sufficient degree of probability by other measures;
5. Temporarily prohibit persons from discharging managerial responsibilities who hold management positions in a legal entity pursuant to § 26 Securities Supervision Act 2018 and prohibit any other natural persons responsible for the infringements from discharging managerial responsibilities pursuant to § 26 Securities Supervision Act 2018;
6. In the case of repeated infringements of Article 14 or 15 of Regulation (EU) 596/2014, permanently prohibit persons who hold management positions in a legal entity pursuant to § 26 Securities Supervision Act 2018 or any other responsible natural person from discharging managerial responsibilities pursuant to § 26 Securities Supervision Act 2018 in the legal entity;
7. Temporarily prohibit persons who discharge managerial responsibilities in a legal entity pursuant to § 26 Securities Supervision Act 2018 or any other responsible natural persons from engaging in transactions for their own account.

(3) If the amount of the profit earned or the loss avoided cannot be ascertained or calculated, or only with an unreasonable amount of time and effort, the FMA shall estimate such amount. The money from fines imposed by the FMA pursuant to § 154, § 155 and § 156 goes to the federal government. The latter does not apply to acts committed before the entry into force of the federal act amended by Federal Law Gazette I no 76/2016.

#### **Exercise of Supervisory Powers and Sanctioning**

**§ 158** (1) Irrespective of any other administrative provisions, the FMA must take the circumstances listed below into account when determining the type of sanction or measures to be imposed due to infringements of the provisions of this federal act or due to infringements of provisions of decrees or official notices issued on the basis of this federal act as well as when assessing the amount of a fine:

1. the gravity and the duration of the violation;
2. the degree of responsibility of the natural persons or legal entities responsible;
3. the financial capacity of the natural person or legal entity measured, for example, on the basis of total revenues of the legal entity responsible or the annual revenues of the natural person responsible;
4. the amount of the profit or loss incurred or of the losses avoided by the natural person or legal entity provided the amount can be quantified;
5. the loss incurred by a third party due to the infringement provided the amount can be quantified;
6. the willingness of the natural person or legal entities responsible to work together with the FMA;

7. previous infringements by the natural persons or legal entities responsible, and
8. measures taken after the infringement by the natural person or legal entity responsible to prevent a repeat of such infringement.

(2) The FMA must apply the General Administrative Procedure Act when exercising its supervisory powers and the Administrative Offenses Act when investigating administrative offenses pursuant to this federal act.

### **Reporting of Infringements**

**§ 159** (1) Employers that are supervised by the FMA must have adequate procedures in place so as to enable their staff - while safeguarding the confidentiality of their identity - to report to an appropriate body any internal violations of the provisions of this federal act, violations of decrees or official notices issued on the grounds of these provisions, violations of the provisions of Regulation (EU) No 596/2014 or of delegated act issued on the basis of this Regulation. The procedures pursuant to this paragraph must meet the requirements set out in para 3 nos 2 to 4.

(2) The FMA must have effective mechanisms in place that encourage persons to report infringements or suspected infringements of the provisions of this federal act, of decrees or official notices issued based on these provisions, of the provisions of Regulation (EU) No 596/2014 or of a Delegated Act issued on the basis of this Regulation.

(3) The mechanisms specified in para 2 must include as a minimum

1. special procedures for receiving reports on infringements and for their further investigation;
2. adequate protection measures for employees of employers pursuant to para 1 who report infringements within their financial institution, protecting them at least from reprisals, discrimination or other forms of mobbing;
3. protection of identity pursuant to the principles of Regulation (EU) 2016/679 for both the person who reports the infringement and for a natural person who is allegedly responsible for an infringement;
4. clear rules that guarantee the confidentiality of the identity of the person reporting the infringements unless the disclosure of the identity of such person is mandatory within the scope of proceedings conducted by a public prosecutor, a court of law or an administrative authority.

(4) Employees that report infringements in the meaning of this federal act within the scope of internal company procedures or to the FMA, must not be

1. discriminated against for having made the report, especially with respect to remuneration, career advancement, further education and training, relocation or when terminating their employment contract, or
2. made liable under criminal law,

unless the report submitted was intentionally false. The employer or a third party shall be entitled to compensation for damages only if the report of the employee is obviously incorrect and was made with the intent to cause damage. The right to make such a report must not be restricted by contract. Any agreements to the contrary shall be invalid.

### **Whistleblowing**

**§ 160** (1) For the purposes of this provision, the following definitions shall apply:

1. Reporting person: A person who reports to the FMA an actual or potential infringement against Regulation (EU) No 596/2014;
2. Reported person: a person who is accused by the reporting person to have committed an infringement against Regulation (EU) No 596/2014 or to have planned such infringement;
3. Infringement report: the report received by the FMA regarding an actual or potential infringement against Regulation (EU) No 596/2014 submitted by the reporting person.

(2) The FMA must have employees who have been specifically trained and deployed for processing infringements reports ("special employees") and who carry out the following tasks:

1. Communicate information on the procedure for reporting infringements to interested persons;
2. Accept the receipt of and follow up on infringement reports;
3. Maintain contact with the reporting persons provided they have disclosed their identity.

(3) The FMA must publish in a separate and easily recognizable and accessible area of its website the following information on how to submit an infringement report:

1. The communications channels for the receipt of and follow-up on an infringement report and how to contact the special employees pursuant to para 5 including
  - a) phone numbers as well as information on whether or not the telephone conversation will be recorded when using the line;
  - b) special e-mail addresses and postal addresses of the special staff which are secure and ensure confidentiality;

2. The procedures that apply when infringements are reported pursuant to para 4;
3. The confidentiality provisions that apply to the infringement reports pursuant to the procedures applicable to infringement reports mentioned in para 4;
4. The procedures for protecting persons who are employed under employment contracts;
5. A statement which makes it unequivocally clear that when a report is made with information pursuant to Regulation (EU) No 596/2014 by a person to the FMA, this shall not be considered a breach of any disclosure restrictions under a contract or pursuant to law or administrative provisions and that this will not entail any adverse consequences for said person.

(4) The procedure for infringement reporting must contain

1. A note stating that the infringement reports may also be submitted anonymously,
2. The manner and form of how the FMA may request the reporting person to give more precise details on the information reported or request additional supplementary information which the reporting person has at its disposal,
3. Type, content and period for sending a response on the result of the infringement report to the reporting person, and
4. The confidentiality rules for infringement reports, including a detailed description of the circumstances under which the confidential data of the reporting person pursuant to Articles 27, 28 and 29 of Regulation (EU) No 596/2014 may be disclosed,

so as to ensure that the reporting person is aware of the exceptions in which the confidentiality of the data may possibly not be guaranteed, among other things, if the disclosure of the data is a necessary and reasonable obligation pursuant to the laws of the European Union or required by national law in connection with investigations or subsequent court proceedings to guarantee the freedoms of others, among other things, the right of defense of the person being reported, with the disclosure in any case being subject to suitable protection measures pursuant to these legal provisions.

(5) For the receipt of and follow-up on infringement reports, the FMA must set up independent and autonomous communications channels which are both secure and also guarantee confidentiality ("special communications channels") and make available to the reporting person before, or at the latest, during receipt of the report, the information mentioned in para 3. The FMA must ensure that an infringement report received through channels other than the special channels mentioned in this federal act will be forwarded, unchanged and using the special communications channels, to the special employees of the competent authority. Using the special communications channels, it must be possible to report actual or potential infringements in the following ways as a minimum:

1. Written reports of an infringement in electronic or paper form;
2. Oral reports of an infringement over the telephone, with or without the recording of the conversation;
3. Personal meetings with special employees of the FMA.

(6) Special communications channels pursuant to para 5 shall be deemed to be independent and autonomous if they meet the following criteria:

1. They are installed separately from the general communications channels of the FMA, including the communications channels which the FMA uses internally and with third parties for the communication of its general work processes;
2. They are designed, installed and operated in a way that guarantees the completeness, integrity and confidentiality of the information and prevents access by unauthorized employees of the FMA;
3. They enable the storage of permanent information pursuant to paras 7 to 10 so as to make further investigations possible.

(7) The FMA must document every infringement report and immediately confirm receipt of the written infringement report to the postal address or e-mail address given by the reporting person, unless the reporting person has explicitly requested this is not to be done or the FMA has reason to assume that the confirmation of receipt of a written report would pose a risk to the protection of the identity of the reporting person.

(8) If a telephone line that records conversations is used for reporting an infringement, the FMA is authorized to document the oral report in the following manner:

1. Recording of the telephone conversation in a permanent and retrievable form, or
2. Complete and accurate transcription of the conversation prepared by the special staff of the FMA; if the reporting person has disclosed his or her identity, the FMA must give that person the opportunity to check the transcript of the telephone conversation and to correct and confirm it by their signature.

(9) If a telephone line is used for reporting an infringement that does not record the conversation, the FMA is authorized to document the oral report by taking down detailed minutes of the conversation, which shall be done by the special staff of the FMA. If the reporting person has disclosed his or her

identity, the FMA shall give that person the opportunity to check the minutes of the telephone conversation, and to correct and confirm them by their signature.

(10) If the person making the infringement report requests a meeting in person with the special staff of the FMA pursuant to para 5 no 3, the FMA must ensure that a complete and accurate record is made of the meeting in a permanent and retrievable form. The FMA must document the meeting in person in the following manner:

1. Recording of the conversation in a permanent and retrievable form, or
2. Take down detailed minutes of the meeting by the special staff of the FMA; if the reporting person has disclosed his or her identity, the FMA shall give the person the opportunity to check the minutes of the meeting, and to correct and confirm them by their signature.

(11) The FMA must establish, for the purposes of preventing reprisals, discrimination or disadvantages of any other kind as may arise due to the reporting of an infringement against Regulation (EU) No 596/2014 or in connection with it, a procedure for the exchange of information and for working together with other authorities which play a role in the protection of persons who are employed under an employment contract and who report infringements against Regulation (EU) No 596/2014 to the FMA or who have been accused of such infringements. The procedures for the exchange of information must guarantee the following:

1. The reporting persons are entitled to comprehensive information and advice on the rights of appeal and procedures to protect against discrimination under national law, including procedures to claim financial compensation;
2. The reporting persons must receive effective support from the competent authorities in dealings with other relevant authorities which are involved in their protection against discrimination, including the confirmation in labor court disputes that the reporting person is acting as an informant.

(12) The FMA must store the recordings pursuant to paras 7 to 10 in a trustworthy and secure system and must restrict access to this system in such a manner that the data stored therein is only accessible by employees who need such access to the data to fulfill their professional obligations.

(13) The FMA must establish adequate procedures within and outside the FMA for the transmission of the personal data of the reporting person and of the person being reported, and must ensure that the data transmission within and outside the FMA in connection with an infringement report does not permit the direct or indirect disclosure of the identity of the reporting person or of the person being reported or give any other indications that could serve to derive the identity of the reporting person or of the person being reported unless such transmission is made in accordance with the confidentiality provisions specified in para 4 no 2.

(14) If the identity of the reporting person is unknown to the public, the FMA must ensure that the identity is protected in at least the same manner as the identity of the persons against whom the FMA is conducting an investigation. Para 12 shall also apply to the protection of the identity of the person being reported.

(15) The FMA must review its procedures for the receipt of and follow-up on infringement reports regularly and at least every two years. When reviewing these procedures, the FMA must take its experience and the experience of other competent authorities into account and adjust its procedures to be in line with market developments and technology.

#### **Publication of Decisions**

**§ 161** (1) Contingent on para 3, the FMA must publish every decision on administrative sanctions or administrative measures imposed with respect to an infringement against Regulation (EU) No 596/2014 on its official website immediately after the person affected by the decision has been informed of it. In this context, the type and nature of the infringement and the identity of the persons responsible must be disclosed as a minimum.

(2) Para 1 shall not apply to decisions relating to measures imposed that are investigative in nature.

(3) If the FMA is of the opinion that the disclosure of the identity of a legal entity or the personal data of a natural person to whom a decision relates would be unreasonable after assessing the data of the individual case, or if the disclosure would be a threat to ongoing investigations or pose a risk to financial markets, it shall act as follows:

1. It shall postpone the publication of the decision until the grounds for the postponement cease to exist;
2. It shall publish the decision in an anonymous version if the anonymous version guarantees effective protection of the personal data;
3. It shall not publish the decision if it is of the opinion that a publication pursuant to nos 1 and 2 is not sufficient to ensure that
  - a) the stability of the financial markets is not at risk, or

b) the proportionality of the publication of such decisions with respect to minor measures is guaranteed.

(4) If there are grounds for anonymous publication pursuant to para 3 no 2, but it may be assumed that these reasons will cease to exist in the foreseeable future, the FMA may refrain from an anonymous publication and disclose the sanctions also pursuant to para 1 after the grounds pursuant to para 3 no 2 cease to exist.

(5) The party affected by the publication of information may request the FMA to review the lawfulness of the publication pursuant to para 1 or para 3 no 2 in proceedings which are concluded with a final decision in the form of an official notice. In this case, the FMA shall announce the initiation of such proceedings in the same manner. If the outcome of the review ascertains the unlawfulness of the publication, the FMA shall correct the publication, or, upon request of the party concerned, publish a statement retracting it or remove it from the website.

(6) Should an objection filed against an official notice which was published pursuant to para 1 or para 3 no 2 be granted suspensory effect in proceedings before a court of public law, the FMA shall disclose this in the same manner. The disclosure must be corrected, or, upon request of the party affected, be either revoked or removed from the website when the official notice is repealed.

(7) If an appeal is filed against decisions pursuant to paras 5 and 6 with national courts, administrative bodies or other authorities, the FMA must also publish these facts and all further information on the outcome of the appeal proceedings immediately on its website. The FMA must immediately publish any decision on its website that relates to a decision rescinded as the outcome of an appeal.

(8) If the publication pursuant to para 1 or para 3 no 3 is not to be retracted or removed from the website based on a decision pursuant to paras 5 and 6, the FMA must keep the publication on its website for at least five years. However, personal data may remain published on said website only as long as none of the criteria pursuant to para 3 nos 1 to 3 is met.

## **Section 4**

### **Market Abuse Punishable by a Court of Law**

#### **Scope of Application of Sanctions Imposed by a Court of Law**

**§ 162** (1) § 151, § 163 to § 173 shall apply irrespective of whether the act was committed on a trading venue.

(2) They shall not apply to

1. measures relating to monetary policy, government debt administration, climate policy and the Common Agricultural and Fisheries Policy pursuant to Article 6 of Regulation (EU) No 596/2014 and
2. trading in own shares within the scope of repurchase programs and trading in securities or related instruments pursuant to Article 3 (2) lit a and b of Regulation (EU) No 596/2014 for the stabilization of securities provided this trading is in accordance with Article 5 of Regulation (EU) No 596/2014.

#### **Inside Dealings and Disclosure of Inside Information Punishable by a Court of Law**

**§ 163** (1) Anyone who as an insider (para 4) has inside information (Article 7 (1) to (4) of Regulation (EU) 596/2014) and, taking advantage of this information, for himself or herself or for a third party,

1. buys or sells financial instruments to which said information refers, or buys or sells auctioned products based on emission allowances for more than EUR 1 million,
2. cancels or modifies orders for more than EUR 1 million to buy or sell such financial instruments or auctioned products based on emission allowances that had been placed before obtaining the inside information, or
3. makes bids on emission allowances or other auctioned products based on these emission allowances to which the information refers for more than EUR 1 million or withdraws or modifies such bids for more than EUR 1 million,

shall be punishable by a prison sentence from six months to five years.

(2) Likewise punishable shall be anyone who has inside information as an insider and makes a recommendation to a third party

1. to buy or sell financial instruments to which said information refers, or to buy or sell auctioned products based on emission allowances,
2. to cancel or modify orders placed to buy or sell such financial instruments or auctioned products based on emission allowances, or
3. to submit, modify or withdraw bids on emission allowances or other auctioned products based on these emission allowances to which the information refers,

if, within the five trading days following the time he or she gained knowledge of the inside information, there is a price change in the financial instrument on its most important market in terms of liquidity (Article 4 (1) lit a of Regulation (EU) 600/2014) of at least 35 percent and the total volume is at least EUR 10 million. Participation (§ 12 Criminal Code, Federal Law Gazette no 60/1974) and the attempt (§ 15 Criminal Code) shall not be punishable by law.

(3) Anyone who as an insider has inside information and discloses this information unlawfully to a third party shall, if the circumstances described in para 2 are given, be punishable with a prison sentence of up to two years. The attempt (§ 15 Criminal Code) shall not be punishable by law.

(4) An insider is any person who has inside information, because the person

1. is a member of the administrative, management or supervisory body of the issuer or an emission allowances market participant,
2. holds a share in the capital of the issuer or of emission allowances market participant,
3. has access to the information concerned within the scope of work he or she carries out or in the exercise of his or her profession or in the execution of tasks, or
4. has obtained the information by committing criminal acts.

(5) Any other person who knowingly receives inside information or a recommendation from an insider and uses this information in a manner described in para 1 nos 1, 2 or 3 shall be punishable with a prison sentence from six months to five years. However, anyone who only facilitates the use of a recommendation (§ 12 third case, Criminal Code) shall not be punishable by law.

(6) Anyone who knowingly has inside information and recommends to a third party

1. to buy or sell financial instruments to which said information refers, or to buy or sell auctioned products based on emission allowances,
2. to cancel or modify orders placed to buy or sell such financial instrument, or
3. to submit, modify or withdraw bids on emission allowances or other auctioned products based on these emission allowances to which the information refers,

shall, if the circumstances described in para 2 are given, be punishable with a prison sentence from six months to five years. The participation (§ 12 Criminal Code) and the attempt (§ 15 Criminal Code) shall not be punishable by law.

(7) Any person who knowingly receives inside information or a recommendation from an insider and discloses this information unlawfully to a third party shall, if the circumstances described in para 2 are given, be punishable with a prison sentence of up to two years. The attempt (§ 15 Criminal Code) shall not be punishable by law.

(8) Financial instruments (Article 4 (1) No 15 of Directive 2014/65/EU) in the meaning of these provisions are

1. financial instruments admitted to trading on a regulated market or for which an application for admission to trading on such a market has been submitted;
2. financial instruments traded on a multilateral trading system, admitted to trading on a multilateral trading system or for which an application for admission to trading in a multilateral trading system has been submitted;
3. financial instruments traded on an organized trading system;
4. financial instruments not covered by nos 1 to 3, but whose price or value depends on the price or value of one of the above financial instruments or whose price or value has an influence on such financial instrument.

#### **Market Manipulation Punishable by a Court of Law**

**§ 164** (1) Anyone who unlawfully carries out trades or places orders for more than EUR 1 million and in this manner

1. sends false or misleading signals regarding the supply or the price of a financial instrument, an associated spot commodity contract or an auctioned product based on emission allowances or regarding demand, or
2. secures an abnormal or artificial price level in a financial instrument, an associated spot commodity contract or an auctioned product based on emission allowances,

shall be punishable with a prison sentence from six months to five years.

(2) Likewise punishable shall be anyone who enters into a transaction or places orders under false pretenses or by any other deceitful actions or forms of deception with a volume of more than EUR 1 million if such behavior may affect the price of a financial instrument, an associated spot commodity contract or an auctioned product based on emission allowances.

(3) Financial instruments (Article 4 (1) No 15 of Directive 2014/65/EU) in the meaning of this provision shall be understood to be instruments pursuant to § 163 para 8 – including derivative contracts and derivative financial instruments for the transfer of credit risk – where the transaction or



trade order has an effect on the price or value of a spot commodity contract or whose price or value depends on the price or value of said financial instruments.

(4) Spot commodity contracts (Article 3 (1) No 15 of Regulation 596/2014) in the meaning of these provisions shall be understood to be those which are not wholesale energy products and where the transaction or trade order has an influence on the price or value of a financial instrument pursuant to § 163 para 8.

(5) Anyone who manipulates the calculation of a critical benchmark pursuant to Article 20 (1) of Regulation (EU) No 1011/2016 and pursuant to delegated regulations issued under that Regulation, by transmitting false or misleading information or providing false or misleading inputs, shall be punishable by a prison sentence from six months to five years.

## **Section 5**

### **Special Provisions for Criminal Proceedings Including Investigations by the Public Prosecutor**

#### **Application of the Code of Criminal Procedure**

**§ 165** (1) Unless otherwise stipulated below, the provisions of the Code of Criminal Procedure shall apply to the criminal proceedings for inside dealings and disclosures as well as market manipulation (§ 163, § 164).

(2) The special provisions of this section also apply to proceedings relating to an offense which at the same time constitutes a criminal act of another type punishable by a court of law.

#### **Special Jurisdiction of the Regional Criminal Court Vienna (*Landesgericht für Strafsachen Wien*)**

**§ 166** The main proceedings for criminal acts pursuant to § 163, § 164 shall come within the jurisdiction of the Regional Criminal Court Vienna.

#### **Mode of Procedure of the FMA when the Court has Jurisdiction**

**§ 167** (1) If the FMA ascertains that the court has jurisdiction for the prosecution of the criminal act, it must notify the public prosecutor; at the same time, any administrative criminal proceedings already initiated must be to be discontinued temporarily. In such cases, the FMA shall conduct investigations to determine the facts of the case and conduct a probe of the suspected crime only to the extent it has been charged with this task by the public prosecutor – irrespective of the exercise of its powers pursuant to § 153 para 1.

(2) If criminal proceedings are pursued by the public prosecutor or the court, the FMA must temporarily discontinue any administrative criminal proceedings for the same crime as soon as it become aware of these proceedings.

(3) If the criminal investigations are discontinued by the public prosecutor pursuant to § 171 para 1 or if the court proceedings are closed by a court decision with final legal effect based on non-jurisdiction (decision on lack of jurisdiction), the FMA must continue the administrative criminal proceedings. Any interrupted penal sanction shall be continued.

(4) If the court proceedings are terminated by a final court decision with final legal effect based on reasons other than lack of jurisdiction, the FMA must discontinue its proceedings and the penal sanctions with final effect.

#### **Exercise of Tasks in the Administration of Justice under Criminal Law by the FMA**

**§ 168** (1) The Public Prosecutor shall generally entrust to the FMA the investigation of criminal acts pursuant to § 163, § 164 within the scope of its powers pursuant to § 153 para 1; in such case, the FMA shall take action within the scope of its duties in the administration of justice under criminal law (Article 10 (1) No 6 Federal Constitutional Act).

(2) The public prosecutor shall task the criminal police with investigations for which the powers of the FMA do not suffice. This shall apply especially to the execution of seizures, confiscations, arrests and house searches.

(3) Furthermore, the public prosecutor may task the criminal police with investigations if

1. this seems useful in the light of the investigations to be carried out,
2. the FMA cannot take action in time, or
3. the facts to be investigated at the same time constitute a criminal act of another type which is punishable by a court of law.

(4) If the criminal police is tasked with investigations, the FMA shall be given an opportunity to take part in such investigations. However, if imminent danger calls for immediate action by the authorities, the FMA shall be informed without unnecessary delay of the investigations of the criminal police and shall be given an opportunity to gain knowledge of the results of such investigations.

(5) The FMA must report to the public prosecutor pursuant to § 100 Code of Criminal Procedure, with the FMA being obligated pursuant to § 100 para 2 no 1 Code of Criminal Procedure to inform the public prosecutor of every crime suspected pursuant to § 163, § 164.

#### **Position and Rights of the FMA in Criminal Proceedings**

**§ 169** (1) The FMA shall have the position of a private party in any criminal proceedings in which it is not entrusted with investigations as well as in main proceedings and appeal proceedings being conducted for criminal acts pursuant to § 163, § 164.

(2) Apart from the rights of an injured party, of a private party in criminal proceedings and of private party continuing proceedings after the public prosecutor has withdrawn from prosecution (*Subsidiärankläger*), the FMA shall have the following rights:

1. The FMA shall have the right to lodge appeals against court decisions to the same extent as the public prosecutor and to demand the re-opening of criminal proceedings,
2. The FMA's plea of nullity shall not require the signature of a counsel for the defense,
3. The FMA shall be informed of any hearings to decide on the need to keep the accused person in custody (§ 175 and § 176 Code of Criminal Procedure) and of any oral hearings in appeal proceedings,
4. FMA representatives shall have the right to make statements at hearings to decide on the need to keep the accused in custody, at oral hearings in appeal proceedings, and to file applications, and
5. the inspection of court files (§ 68 Code of Criminal Procedure) shall not be denied or restricted.

(3) The presumption of withdrawal from prosecution (§ 72 paras 2 and 3 Code of Criminal Procedure) shall not apply to the FMA as prosecutor.

(4) The special rights of the FMA shall also extend to other criminal acts which occur together within one and the same criminal act pursuant to § 163, § 164.

#### **Consultation Rights and Information Rights of the FMA**

**§ 170** (1) Before issuing a notice pursuant to § 200 para 4, § 201 para 4 or § 203 para 3 Code of Criminal Procedure, the public prosecutor or the court shall give the FMA an opportunity to make a statement.

(2) Every petition filed to open criminal proceedings for a crime pursuant to § 163 or § 164 must also be served to the FMA; the public prosecutor shall also serve the court a counterpart of the petition for criminal proceedings to be forwarded to the FMA.

#### **Discontinuance of Proceedings and Withdrawal from Prosecution**

**§ 171** (1) The public prosecutor must discontinue the investigation proceedings when the courts do not have jurisdiction in the main proceedings (§ 154).

(2) If the public prosecutor discontinues the investigation proceedings pursuant to para 1 or otherwise pursuant to § 190 Code of Criminal Proceedings or if the public prosecutor withdraws from the prosecution of such an act, the FMA must be informed thereof (§ 194 and § 208 para 3 Code of Criminal Procedure). Furthermore, the court must inform the FMA of the termination of criminal proceedings.

(3) If the public prosecutor withdraws from the prosecution of a crime pursuant to § 163 and § 164 and discontinues investigation proceedings, the FMA has the right to request the continuation of the investigation proceedings pursuant to § 195 Code of Criminal Procedure.

#### **Requirements for Serving Documents**

**§ 172** The FMA shall generally be served court notices and other documents which this federal act stipulates it shall be notified of without requiring proof of delivery. The summons to the main trial, court notices and other documents against which the FMA has the right of legal recourse or the right of appeal shall be served upon with proof of delivery being mandatory (§ 13 to § 20 of the Act on the Serving of Official Notices, Federal Law Gazette no 200/1982) or shall be served by telefax transmission or within the scope of electronic legal transactions (§ 89a Court Organization Act, Imperial Law Gazette no 217/1896).

#### **Costs and Cash Reimbursements**

**§ 173** (1) The costs of the criminal proceedings shall include expenses incurred by the FMA as a private party to proceedings or as private party continuing proceedings after the public prosecutor has withdrawn from prosecution (*Subsidiärankläger*); these costs shall not be included in the lump sum costs of court proceedings.

(2) The costs incurred by the FMA in the administration of justice under criminal law shall be taken into account in the provisions on the lump sum cost contribution unless these are to be reimbursed separately in accordance with § 381 para 1 no 3, 4 or 5 Code of Criminal Procedure.

(3) The FMA shall be reimbursed only for cash expenses and costs that would be due to the Federal Attorney's Office pursuant to § 8 of the Act on the Federal Attorney's Office, Federal Law Gazette no 110/2008.

## **Section 6**

### **Procedural Provisions**

**§ 174** (1) The exchange operating company shall apply the General Rules of Administrative Procedure for all procedural matters relating to the exercise of its function as official authority.

(2) In the case of onsite investigations pursuant to § 153 para 1, all official persons conducting the investigations must have a written order authorizing the investigations and must identify themselves before the start of the investigations and show the investigations order. Furthermore, § 71 paras 1 to 4 Banking Act shall apply.

(3) The following Federal Ministries are in charge of enforcing the provisions as follows:

1. of § 151, § 162 to § 164, the Minister of Justice;
2. of § 165 to § 172, the Minister of Finance in agreement with the Minister of Justice;

## **Section 7**

### **Transitional Provisions**

**§ 175** After this federal act enters into force, the following transitional provisions shall apply:

1. Repealed by FLG I No 62 of 22 July 2019
2. (relating to § 153 and § 159 to § 161)

§ 153 and § 159 to § 161 shall expire with respect to the obligations for the purposes of data processing to be carried out by 25 May 2018. Data processing to be carried out for the purposes of these provisions shall be deemed to meet the requirements of Article 35 (10) of Regulation (EU) 2016/679 for the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No L 119 of 4 May 2016 page 1 for the omission of a data protection impact assessment.

§ 153 and § 159 to § 161 shall not apply with respect to the obligations for the purposes of the data processing to be carried out before 25 May 2018, provided the requirements of the General Data Protection Regulation are complied with.

## **Main Part 4**

### **Short Selling and Credit Default Swaps**

**§ 176** (1) The FMA is the competent authority for Austria pursuant to Article 32 of Regulation (EU) No 236/2012 for short selling and certain aspects of credit default swaps (OJ No L 86 of 24 March 2012, p. 1) and, irrespective of the tasks assigned to it by other federal laws, it exercises those tasks and powers that belong to the scope of a competent authority pursuant to Regulation (EU) No 236/2012 and supervises compliance with the provisions of Regulation (EU) No 236/2012. The FMA is empowered, in particular, to take measures pursuant to Article 13 (3), Article 14 (2), Article 18 (1), Article 19 (2), Article 20 (2), Article 21 (1) or Article 23 (1) of Regulation (EU) No 236/2012 by issuing decrees and official notices.

(2) If it is not possible to promulgate a decree defining the measures stated in para 1 in time by publication in the Federal Law Gazette, the decree must be published on the website of the FMA on the internet. If the promulgation of the decree on the internet is not possible for longer than just a short period of time, the decree must be promulgated in another appropriate manner, specifically, in one or more periodical media publications or broadcast via radio. If the effectiveness of a measure depends on it entering into force with immediate effect, the decree may define that it enters into force immediately upon promulgation.

(3) The FMA, within the scope of monitoring compliance with the provisions of Regulation (EU) No 236/2012, shall have the rights set out below:

1. to exercise the rights of § 93 para 2;
2. in the case of an infringement of the provisions of Regulation (EU) No 236/2012, the FMA may, under threat of a fine, instruct a party to reinstate a lawful state within a certain period which is reasonable considering the circumstances of the case.

(4) Any person who commits an infringement of the provisions of Regulation (EU) No 236/2012 or measures taken by the FMA pursuant to Article 18 (1), Article 19 (2), Article 20 (2), Article 21 (1) or Article 23 (1) of Regulation (EU) No 236/2012 shall be deemed to have committed an administrative

offense and shall be sanctioned by the FMA with a fine of up to EUR 150,000. The Administrative Offenses Act shall apply. The attempt shall be punishable by law. Any pecuniary benefit gained shall be declared forfeited to the state by the FMA. § 145 and § 146 shall be applicable to an official act or a sanction imposed for infringements pursuant to this paragraph.

(5) The FMA shall submit to the ESMA an annual summary of all sanctions imposed and administrative measures imposed pursuant to para 4. In the case of a public announcement pursuant to para 3, last sentence, the FMA shall simultaneously inform the ESMA.

## **Main Part 5 Shareholder Rights**

### **Section 1 General Provisions Scope of Application**

**§ 177** (1) This Main Part implements Directive (EU) 2017/828 thereby establishing the requirements in relation to the exercise of certain shareholder rights attaching to voting shares in relation to general meetings of companies which have their registered office in Austria and whose shares are admitted to trading on a regulated market situated or operating within a Member State. Furthermore, it defines special requirements to promote the engagement of shareholders, especially for the long term. These special requirements apply to the identification of shareholders, the transmission of information, the facilitation of the exercise of shareholder rights and transparency of institutional investors, assets managers and proxy advisors.

(2) This Main Part applies to companies that have their registered office within the country.

(3) The competent Member State for the purposes of the application of the Section 3 shall be:

1. for institutional investors and asset managers Austria insofar as it is the home Member State as defined in any applicable sector-specific European Union legislative act;
2. for proxy advisors Austria insofar as they have their registered office within the country, or, if their registered office is not in a Member State insofar as they have their main office within the country, or, if the proxy advisor neither has its registered office nor its head office in a Member State, it is Austria provided it has an establishment within the country.

(4) Section 2 applies to intermediaries provided they supply services to shareholders or other intermediaries that relate to shares in companies that have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.

(5) Section 3 applies to

1. institutional investors provided these invest in shares either directly or through an asset manager that are traded on a regulated market,
2. asset managers provided these invest in such shares for the account of investors, and
3. proxy advisors provided these supply services to shareholders in relation to shares of companies that have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operated in a Member State.

(6) The provisions of this Main Part shall apply irrespective of the provisions of sector-specific legislative acts regulating certain types of companies or certain types of entities. If this federal act contains more specific regulations or additional requirements to the provisions laid down in sector-specific Union legislative acts, the concerned provisions shall apply together with the provisions of this federal act.

(7) The FMA shall monitor compliance with the provisions of this Main Part.

## Definitions

**§ 178** Unless otherwise provided for in the following, the definitions pursuant to § 1 and pursuant to the Stock Corporation Act shall apply. For the purposes of this main part, the following definitions apply:

1. “Intermediary” means an entity, such as an investment firm as defined in Article 4 (1) no 1 of Directive 2014/65/EU, a credit institution as defined Article 4 (1) no 1 of Regulation (EU) No 575/2013 or a central securities depository as defined in Article 2 (1) no 1 of Regulation (EU) No 909/2014, which provides the services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other entities;
2. “institutional investors” designates
  - a) an undertaking carrying out activities of life assurance within the meaning of Article 2 (3) letters (a), (b) and (c) of Directive 2009/138/EC and of reinsurance as defined in Article 13 no 7 of that Directive provided that the activities cover life insurance obligations and are not excluded pursuant to said Directive;
  - b) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 in accordance with Article 2 thereof unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of said Directive;
3. “Asset manager” means an investment firm as defined in Article 4 (1) no 1 of Directive 2014/65/EU that provides portfolio management services to investors, an AIFM (alternative investment fund manager) as defined in Article 4 (1) letter (b) of Directive 2011/61/EU that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive or a management company as defined in Article 2 (1) letter (b) of Directive 2009/65/EC, or an investment company authorized in accordance with Directive 2009/65/EC provided that it has not designated a management company authorized under that Directive for its management;
4. “Proxy advisor” means a legal entity that analyses, on a professional and commercial basis, corporate disclosures and, where relevant, other information of listed companies with a view to informing investors to support them in reaching voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights;
5. “Information regarding shareholder identity” means information allowing the identity of a shareholder to be established, including at least the following information:
  - a) Name and contact details (including full address and, where available, e-mail address) of the shareholder, and, where it is a legal entity, its registration number, or, if no registration number is available, its unique identifier, such as legal entity identifier,
  - b) the number of shares held, and
  - c) only insofar they are requested by the company, one or more of the following details: the categories or asset classes of the shares held or the date from which the shares have been held.

## Section 2

### Identification of shareholders, transmission of information and easier exercise of shareholder rights

#### Identification of Shareholders

**§ 179** (1) The companies have the right to identify their shareholders provided these hold 0.5 percent or more of the shares or voting rights in the company.

(2) The intermediaries must immediately supply the information on the identity of shareholders (including the actual shares held pursuant to para 1) upon their request or the request of a third party charged by the company whose shareholdings reach or surpass the threshold pursuant to para 1. If a shareholder reaches or surpasses a threshold pursuant to para 1 by holding its share in the company through custody accounts with several intermediaries, it shall be under the obligation to notify all intermediaries of this situation. In this case, the intermediaries must send the information on the shareholder’s shares or pursuant to para 3 forward the information on the shares held by the respective intermediaries even if these do not reach the threshold pursuant to para 1. Additionally, the intermediaries must – apart from information on the actual percentages they hold – also send the information reported by the shareholder regarding their shares or pursuant to para 3, forward the

information that they have reached the threshold pursuant to para 1 by holding shares with several intermediaries.

(3) Where there is more than one intermediary in a chain of intermediaries, the intermediaries must ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary that has the requested information. The company or a third party nominated by the company must be sent the information regarding shareholder identity from every intermediary in the chain that holds the information.

(4) The personal data of shareholders shall be processed pursuant to this clause to enable the company to identify its existing shareholders in order to communicate with them directly with the view to facilitating the exercise of shareholder rights and shareholder engagement with the company. Without prejudice to any longer storage period laid down by any sector-specific European Union legislative act, companies and intermediaries shall not store the personal data of shareholders transmitted to them in accordance with this Article for the purpose specified in this Article for longer than 12 months after they have become aware that the person concerned has ceased to be a shareholder.

(5) Legal entities have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.

(6) The disclosure of information regarding shareholder identity in accordance with the rules laid down in this clause is not considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

(7) The disclosure of information regarding shareholder identity pursuant to these provisions is not considered to be in breach of banking secrecy pursuant to § 38 Banking Act.

### **Transmission of Information**

**§ 180** (1) The intermediaries are required to transmit the following information, without delay, from the company to the shareholder or to a third party nominated by the shareholder:

1. the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights arising from its shares, and which is directed to all shareholders in shares of that class;
2. where the information referred to in no 1 is available to shareholders on the website of the company, a notice indicating where on the website that information can be found.

(2) The companies must provide intermediaries in a standardized and timely manner the information referred to in para 1 no 1 or the notice referred to in para 1 no 2.

(3) However, the information referred to in para 1 no 1 or the notice referred to in para 1 no 2 does not need to be transmitted if the companies send that information or that notice directly to all their shareholders or to a third party nominated by the shareholder.

(4) The intermediaries must send, without delay, the information received from the shareholders to the companies in accordance with the instructions received from the shareholders related to the exercise of the rights arising from their shares.

(5) Where there is more than one intermediary in a chain of intermediaries, the information referred to in paras 1 and 4 shall be transmitted between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder or to a third party nominated by the shareholder.

### **Facilitation in the exercise of shareholder rights**

**§ 181** (1) The intermediaries shall facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following measures:

1. The intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise the rights themselves;
2. The intermediary exercises the rights arising from the shares upon the explicit authorization and instruction of the shareholder and for the shareholder's benefit.

(2) If the intermediary receives a confirmation pursuant to § 126 para 2 or § 128 para 4 Stock Corporation Act, FLG No 98/1965 as amended by FLG No 63/2019 it must immediately send this information to the shareholder or to a third party nominated by the shareholder. Where there is more than one intermediary in the chain of intermediaries, the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.

### **Non-discrimination, proportionality and transparency of costs**

**§ 182** (1) The intermediaries must disclose any applicable charges for services provided for under this provision separately for each service.

(2) Any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and the cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.

### **Third-country intermediaries**

**§ 183** This section also applies to intermediaries which have neither their registered office nor their head office in the European Union when they provide services referred to in § 177 para 4.

### **Information on implementation**

**§ 184** The FMA shall inform the Commission of substantial practical difficulties in enforcement of the provisions of this section or non-compliance with the provisions of this section by European Union or third-country intermediaries.

## **Section 3**

### **Transparency of institutional investors, asset managers and proxy advisors Engagement policy**

**§ 185** (1) Institutional investors and asset managers shall either comply with the requirements set out in nos 1 and 2 or publicly disclose a clear and reasoned explanation why they have chosen not to comply with one or more of those requirements:

1. Institutional investors and asset managers shall develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy. The policy shall describe
  - a) how they monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance,
  - b) how they conduct dialogues with investee companies,

- c) how they exercise voting rights and other rights attached to shares,
  - d) how they cooperate with other shareholders,
  - e) how they communicate with relevant stakeholders of the investee companies and
  - f) how they manage actual and potential conflicts of interests in relation to their engagement.
2. Institutional investors and asset managers shall, on an annual basis, publicly disclose how their engagement policy has been implemented, including a general description of voting behavior, an explanation of the most significant votes and the use of the services of proxy advisors. They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

(2) The information referred to in para 1 shall be available free of charge on the institutional investor's or asset manager's website. Where an asset manager implements the engagement policy, including voting, on behalf of an institutional investor, the institutional investor shall provide a reference as to where such voting information has been published by the asset manager.

(3) Conflict of interest rules applicable to institutional investors and asset managers, including Article 14 of Directive 2011/61/EU, Article 12 (1) letter b and Article 14 (1) letter d of Directive 2009/65/EC and the relevant implementing rules, as well as Article 23 of Directive 2014/65/EU shall also apply with regard to engagement activities.

#### **Investment strategy of institutional investors and arrangements with asset managers**

**§ 186** (1) Institutional investors shall publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets.

(2) In cases in which an asset manager invests on behalf of an institutional investor – whether on a discretionary client-by-client basis or through a collective investment undertaking – the institutional investor must publicly disclose the following information regarding its arrangement with the asset manager:

1. How the arrangement with the asset manager incentivizes the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities;
2. How that arrangement incentivizes the asset manager to make investment decisions based on assessments about medium to long-term financial and non-financial performance of the investee company and to engage with investee companies in order to improve their performance in the medium to long-term;
3. How the method and time horizon of the evaluation of the asset manager's performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, and take absolute long-term performance into account;
4. How the institutional investor monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio turnover or turnover range;
5. The duration of the arrangement with the asset manager.

Where the arrangement with the asset manager does not contain one or more of such elements, the institutional investor shall give a clear and reasoned explanation why this is the case.

(3) The information referred to in paras 1 and 2 shall be made available free of charge on the institutional investor's website and shall be updated annually unless there is no material change. Institutional investors regulated by Directive 2009/138/EC are allowed to include this information in their report on solvency and financial condition referred to in Article 51 of that Directive.

#### **Transparency of asset managers**



**§ 187** (1) Asset managers shall disclose, on an annual basis, to the institutional investor with which they have entered into the arrangements referred to in § 186 how their investment strategy and implementation thereof complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor or of the fund. Such disclosure shall include reporting

1. on the key material medium to long-term risks associated with the investments,
2. on portfolio composition, turnover and turnover costs,
3. on the use of proxy advisors for the purpose of engagement activities, and
4. and their securities lending policy and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies.

Such disclosure shall also include information on whether and, if so, how, they make investment decisions based on the evaluation of medium to long-term performance of the investee company, including non-financial performance, and on whether and, if so, which conflicts of interests have arisen in connection with engagements activities and how the asset managers have dealt with them.

(2) Where the information disclosed pursuant to para 1 is already publicly available, the asset manager is not required to provide the information to the institutional investor directly.

### **Transparency of proxy advisors**

**§ 188** (1) Proxy advisors shall publish the reference to the code of conduct they apply and must report on the application of that code of conduct. Where proxy advisors do not apply a code of conduct, they shall provide a clear and reasoned explanation why this is the case. Where proxy advisors apply a code of conduct but depart from any of its recommendations, they shall declare from which parts they depart, provide explanations for doing so and indicate, where appropriate, any alternative measures adopted. Information referred to in this paragraph must be made publicly available, free of charge, on the websites of the proxy advisors and must be updated on an annual basis.

(2) Proxy advisors shall publicly disclose on an annual basis in order to adequately inform their clients about the accuracy and reliability of their activities all of the following information as a minimum in relation to the preparation of their research, advice and voting recommendations:

1. The essential features of the methodologies and models they apply;
2. The main information sources used;
3. The procedures in place to ensure quality of the research, advice and voting recommendations and the qualifications of the staff involved;
4. Whether or not, and, if so, how they take national market, legal, regulatory and company-specific conditions into account;
5. The essential features of the voting policies they apply for each market;
6. Whether or not they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof;
7. The policy regarding the prevention and management of potential conflicts of interest.

Information referred to in this paragraph must be made publicly available, free of charge, on the websites of the proxy advisors for at least three years from the date of publication. The information does not need to be disclosed separately where it is available as part of the disclosure under para 1.

(3) Proxy advisors shall identify and disclose to their clients without delay any actual or potential conflicts of interests or business relationships that may influence the preparation of their research, advice or voting recommendations and the actions they have undertaken to eliminate, mitigate or manage the actual or potential conflicts of interest.

(4) This provision also applies to proxy advisors that have neither their registered office nor their head office in the European Union and carry out their activities through an establishment located within the European Union.

## **Section 4 Penal Provisions**

### **§ 189** Anyone who

1. as an intermediary commits an infringement of its obligation to transmit information pursuant to § 179 para 2 or 3, taking into account Commission Implementing Regulation (EU) 2018/1212, or
2. as an intermediary or company commits an infringement of its obligations regarding the storage or rectification of data stored pursuant to § 179 para 4 or 5, or
3. as an intermediary commits an infringement of its obligation to transmit information pursuant to § 180 para 1, 4 or 5 or as a company commits an infringement of § 180 para 2, taking into account the requirements of Commission Implementing Regulation (EU) 2018/1212, or
4. as an intermediary commits an infringement of its obligations to facilitate the exercise of shareholder rights pursuant to § 181 para 1 or as a recipient of a vote or a confirmation of a vote fails to send a confirmation to the sender or the concerned intermediary or the shareholder or a nominated third party pursuant to § 181 para 2, taking into account the requirements of Commission Implementing Regulation (EU) 2018/1212, or
5. as an intermediary infringes its disclosure obligations pursuant to § 182 para 1 or violates the prohibition of charging discriminatory or unreasonable fees pursuant to § 182 para 2, or
6. as an institutional investor or as an asset manager fails to comply with its obligation to prepare an engagement policy or to publish it pursuant to § 185 para 1 no 1 or commits an infringement of its disclosure obligations pursuant to § 185 para 1 no 2 or its obligations pursuant to § 185 para 2 or 3 or
7. as an institutional investor infringes its disclosure or publication obligations pursuant to § 186, or
8. as an asset manager infringes its disclosure obligations pursuant to § 187, or
9. as a proxy advisor infringes its obligation to provide a reference or its publication obligation pursuant to § 188 para 1 or its announcement obligations or its information obligation pursuant to § 188 paras or 2 or 3,

thereby committing an administrative offence and shall be sanctioned by the FMA with a fine of EUR 25,000. A fine may be waived pursuant to no 6 provided the option is used under § 185 para 1 of making a public declaration explaining the decision why one or more requirements pursuant to no 1 or 2 are not met.

## **Main Part 6 Final Provisions**

**§ 190** (1) Insofar as this federal act refers to other federal acts, these acts shall be applicable as amended, unless otherwise specified.

(2) Where references are made in other federal provisions, including regulations issued by the FMA, to provisions of the Stock Exchange Act 1989 Federal Law Gazette No 555/1989 that have been repealed by this federal act, these shall be replaced by the corresponding provisions of this federal act.

(3) Authorizations pursuant to Stock Exchange Act 1989 valid at the time of entry into force of this federal act shall continue to be valid under this federal act. Authorizations valid by virtue of the law shall continue to be valid regardless of licensing and approval requirements under this federal act.

(4) Insofar as this federal act refers to Directives of the European Union, such directives shall apply in the versions as set out below, unless otherwise specified:

1. Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, OJ No L 100 of 17 March 1980 p. 1;
2. Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 375 of 31 December 1985 p. 3;
3. Repealed by Art. 7 no 12, FLG I No 37/2018
4. Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities, OJ L 184 of 28 May 2001 p. 1, last amended by Directive 2005/1/EC, OJ No L 79 of 24 March 2005 p. 9;

5. Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision OJ L 354 of 23 December 2016, p. 37;
  6. Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, and amending Directive 2001/34/EC, OJ L 345 of 31 December 2003 p. 64, last amended by Directive 2014/51/EU, OJ No L 153 of 22 May 2014 p. 1;
  7. Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Directive 96/61/EC of the Council, OJ L 275 of 25 October 2003 p. 32, last amended by Decision (EU) No 2015/1814, OJ No L 264 of 9 October 2015 p. 1.
  8. Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390 of 31 December 2004, p. 38, last amended by Directive 2013/50/EU, OJ No L 294 of 6 November 2013, p. 13;
  9. Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302 of 17 November 2009 p. 32, last amended by Directive 2014/91/EU, OJ No L 257 of 28 August 2014 p. 186;
  10. Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 25 November 2009, p. 1, last amended by Directive (EU) 2016/2341, OJ No L 354 of 23 December 2016 p. 37;
  11. Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directive 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 1 July 2011, p. 1, last amended by corrigendum OJ L 348 of 21 December 2016 p 83, last amended by Directive 2014/65/EU, OJ No L 173 of 12 June 2014 p. 349;
  12. Directive 2012/30/EU on the coordination of the provisions for the protection of the interests of members and others, required of companies in member states within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and changes to their capital, with a view to making such safeguards equivalent, OJ No L 315 of 14 November 2012 p. 74, last amended by Directive 2014/59/EU, OJ No 173 of 12 June 2014 p. 190, as amended by Corrigendum OJ No L 161 of 18 June 2016 p. 41;
  13. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC repealing Council Directives 78/660/EEC and 83/349/EEC OJ L 182, 26 June 2013, p. 19, last amended by Directive 2014/102/EU, OJ No L 334 of 21 November 2014 p. 86, as amended by corrigendum OJ No L 369 of 24 December 2014 p. 79;
  14. Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176 of 27 June 2013 p. 338, last amended by Directive 2014/59/EU OJ No L 173 of 12 June 2014 p. 190 as amended by corrigendum OJ No L 20 of 15 January 2017 p 1;
  15. Directive 2013/50/EU amending Directive 2004/109/EC harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC, OJ No L 294 of 6 November 2013 p. 13, as amended by corrigendum, OJ No L 14 of 18 January 2014 p. 35;
  16. Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ No L 173 of 12 June 2014 p. 349, as amended by Directive (EU) 2016/1034, OJ No L 175 of 23 June 2016 p. 8, as amended by corrigendum published in OJ No L 278 of 27 October 2017 p. 56;
  17. Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, OJ No L 241 of 17 September 2015 p 1;
  18. Directive (EU) 2017/828 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, OJ No L 132 of 20 May 2017 p. 1.
- (5) Insofar as this federal act refers to Regulations of the European Union, these shall apply in the versions as set out in the following, unless otherwise specified:
1. Regulation (EC) No 45/2001 on the protection of natural persons with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8 of 12 January 2001, p. 1;

2. Regulation (EC) No 1606/2002 on the application of international financial reporting standards, OJ No L 243 of 19 July 2002, p. 1, last amended by Regulation (EC) No 297/2008, OJ No L 97 of 9 April 2008, p. 62;
3. Regulation (EC) No 2273/2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments, OJ No L 336 of 22 December 2003 p. 33;
4. Regulation (EC) No 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of said Directive, OJ L 241 of 2 September 2006, p. 1;
5. Regulation (EU) No 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowances trading within the Community, OJ No L 302 of 18 November 2010 p. 1, last amended by Regulation (EU) No 176/2014, OJ No L 56 of 26 February 2014 p. 11;
6. Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ No L 331 of 24 November 2010 p. 1;
7. Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331 of 15 December 2010, p. 84, last amended by Directive 2014/51/EU, OJ No L 153 of 22 May 2014, p. 1;
8. Regulation (EU) No 1227/2011 on the integrity and transparency of the wholesale energy market, OJ No L 326 of 8 December 2011 page 1;
9. Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps, OJ No L 86 of 24 March 2012, p. 1, last amended by Regulation (EU) No 909/2014, OJ No L 257 of 28 August 2014, p. 1;
8. Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories Text with EEA relevance, OJ L 201 of 27 July 2012, p. 1, last amended by Delegated Regulation (EU) 2017/610, OJ No L 86 of 31 March 2017, p. 3;
11. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176 of 27 June 2013, p. 1, last amended by Regulation (EU) No 2016/1014, OJ No L 171 of 29 June 2016, p. 153, as amended by corrigendum OJ No L 25 January 2017, p. 3;
12. Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ No L 173 of 12 June 2014 p. 1, last amended by Regulation (EU) No 2016/1033, OJ No L 175 of 30 June 2016 p. 1, as amended by corrigendum OJ No L 348 of 21 December 2016 p. 83;
13. Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 15 May 2014, p. 84, last amended by Regulation (EU) 2016/1033, OJ No L 175 of 23 June 2016 p.1;
14. Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ No L 257 of 28 August 2014 p. 1, last amended by Regulation (EU) No 2016/1033, OJ No L 175 of 30 June 2016 p. 1, as amended by corrigendum OJ No L 349 of 21 December 2016 p. 5;
15. Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ No L 87, p. 1;
16. Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, OJ No 87 p. 90, as amended by corrigendum OJ No L 251 of 29 September 2017; p. 30;
17. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No L 119 of 4 May 2016 p. 1;
18. Regulation (EU) 2018/1212 defining the minimum requirements for the implementation of the provisions of Directive 2007/36/EC with respect to shareholder identification, transmission of information and facilitation of the exercise of shareholder rights, OJ No L 223 of 4 September 2018 p. 1;
18. Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ No L 168 of 30 June 2017, p. 12;

(6) Decrees issued on the basis of this federal act, as amended, are permitted to be issued already as of the day following the day on which the implementing federal act is promulgated; however, they are not permitted to enter into force before the implementing provisions of the law.

**§ 191** Without prejudice to Article XIII et seq Act Introducing the Code of Civil Procedure, and where reference is made to the "statutes" of an exchange, these shall be replaced by the "General Terms and Conditions of Business" of the respective exchange operating company.

**§ 192** The exchange operating company may, upon request of an issuer, issue an official notice permitting the switching of securities from the Official Market of a securities exchange, which, under its statutes does not permit (or no longer permits) the trading of said securities on the Official Market, to another securities exchange in Austria on which trading may be continued under the statutes of the exchange operating company running such other exchange. The official notice on the switch in listing shall not impose any obligation on the issuer to publish a prospectus or regarding any other disclosure obligations.

#### **Equal Treatment in Language**

**§ 193** Any references in this federal act to persons given only in the masculine form shall refer equally to men and women. When applied to specific persons, the applicable gender-specific form shall be used.

#### **Entry into Force**

##### **§ 194**

(1) This federal act enters into force on 3 January 2018. § 94 applies to the financial years of the FMA that start after 31 December 2017.

(2) § 47 para 1 no 1 expires on 3 January 2018.

(3) § 126 as amended by Federal Act Federal Law Gazette I No 46/2019 enters into force on 1 July 2019.

(4) The table of contents, § 20 para 4 no 3, § 177 and § 178, § 182 to § 188 as well as § 190 to § 195 as amended by federal act FLG I no 64/2019 enters into force on 10 June 2019.

(5) § 179 to § 181 and § 189 nos 1 to 4 as amended by federal act FLG I No 64/2019 enters into force on 3 September 2020.

(6) § 39 para 5 no 3, § 40 para 1 no 8, § 42 para 3 no 7, § 46, § 82 para 2 no 3, § 129 para 1 and § 177 para 5 no 18, as amended by Federal Law Gazette I No 62/2019 shall enter into force on 21 July 2019. § 47 and § 175 no 1 expire at the close of 20 July 2019.

(7) § 164 para 5 as amended by federal act FLG I No 20/2020 shall enter into force on 22 March 2020.

#### **Expiry**

**§ 195** The Stock Exchange Act 1989 (BörseG 1989), Federal Law Gazette No 555/1989 expires with the close of the day on 2 January 2018.

### Layout for the Interim Reports of Credit Institutions

#### Assets

1. Cash and balances with central banks and giro banks
2. Debt securities issued by public bodies and bills of exchange admitted for refinancing with central banks
3. Receivables from other banks
4. Receivables from customers
5. Debt securities and other fixed income securities
6. Shares and other variable income securities
7. Investments
8. Investments in affiliated companies
9. Other assets

#### Liabilities

1. Amounts owed to banks
2. Amounts owed to customers
  - a) Savings deposits
  - b) Other payables
3. Securitized payables
4. Provisions
5. Fund for general banking risks
6. Tier 2 capital pursuant to Part Two, Title I, Chapter 4 of Regulation (EU) No 575/2013
7. Additional Tier 1 capital pursuant to Part Two, Title I, Chapter 3 of Regulation (EU) No 575/2013
8. Mandatory convertible bonds pursuant to § 26 Banking Act
9. Instruments without voting rights pursuant to § 26a Banking Act
10. Subscribed capital
11. Reserves
12. Liability reserve
13. Other liabilities

#### Off balance sheet items

1. Contingent liabilities
 

including:

  - a) Acceptance bills and commitments arising from the endorsement of bills of exchange forwarded
  - b) Liabilities from sureties and guarantees
2. Credit risks

#### Income statement

1. Interest and similar income
2. Interest and similar expenses

#### I. Net interest earnings

3. Income on shares, other equity rights and variable-income securities
4. Income on investments and shares in affiliated companies
5. Net commission income
6. Income on financial transactions
7. Other operating income

#### II. Operating income

8. Staff costs
9. Other administrative expenditure (operating expenses)
10. Value adjustments for capital goods
11. Other operating expenses

#### III. Operating expenses

#### IV. Operating result

Translated by Edith Vanghelof for the Vienna Stock Exchange

## Abbreviations and references to legislation

Act Introducing the Code of Civil Procedure	Einführungsgesetz zur Zivilprozeßordnung, EGZPO
Act on Salaried Workers	Angestelltengesetz, AnG:
Act on Tendering Procedures	Ausschreibungsgesetz
Administrative Offenses Act	Verwaltungsstrafgesetz, VStG
Austrian schillings	ATS
Banking Act	Bankwesengesetz, BWG
Banking Act 1979 (replaced by the Banking Act 1993, BWG=Bankwesengesetz)	Kreditwesengesetz, KWG
Bankruptcy Act	Konkursordnung, KO
Bundeskriminalamt-Gesetzes – BKA-G	Criminal Intelligence Service Act
Trade Code	Gewerbeordnung, GewO
Capital Market Act	Kapitalmarktgesetz, KMG
Capital Transactions Tax Law	Kapitalverkehrssteuergesetz
CCP - Code of Civil Procedure	Zivilprozeßordnung, ZPO
Code of Criminal Procedure	Strafprozeßordnung, StPO
Commercial Code	Handelsgesetzbuch, HGB
Consumer Protection Act	Konsumentenschutzgesetz:
Council of the Vienna Stock Exchange	Wiener Börsekammer (until 2 April 1998)
Criminal Intelligence Service Act	Bundeskriminalamt-Gesetz
Data Protection Act	Datenschutzgesetz
Decree	Verordnungen der FMA
Depotgesetz	Securities Depository Act
Federal Administrative Court	Bundesverwaltungsgericht (established in Austria 1 January 2014)
Federal Law Gazette	Bundesgesetzblatt, FLG
Financial Markets Authority	FMA
Finanzmarktaufsichtsbehördengesetz – FMABAG	Financial Market Authority Act
Finanzmarkt-Geldwäschegesetzes – FM-GwG	Financial Markets Anti-Money Laundering Act
Finanzprokuraturgesetzes	Act on the Federal Financial Agency
Fiscal Penalties Act	Finanzstrafgesetz, FinStrG
Gazette of the German Reich	deutsches Reichsgesetzblatt, dRGBl.
Geldwäschemeldestelle	Financial Intelligence Unit
General Law on Administrative Procedure	Allgemeines Verwaltungsverfahrensgesetz, AVG
Gerichtsorganisationsgesetz GOG	Court Organization Act
Imperial Gazette (of the Austro-Hungarian Empire)	Reichsgesetzblatt, RGBl
Insurance Policy Act	Versicherungsvertragsgesetz, VersVG
Insurance Supervision Act	Versicherungsaufsichtsgesetz, VAG
Investment Fund Act	Investmentfondsgesetz, InvFG
Law Enforcement Bodies Act	Sicherheitspolizeigesetz, SPO
Law on Administrative Enforcement	Verwaltungsvollstreckungsgesetz, VVG
MTF	multilateral trading facilities
Oberlandesgericht Wien	Higher Regional Court of Vienna
Oesterreichische Nationalbank	Oesterreichische Nationalbank (=Austrian central bank, name is used in English)
Pension Plans Act	Pensionskassengesetz, PKG
Securities Supervision Act	Wertpapieraufsichtsgesetz, WAG
Stock Corporation Act	Aktiengesetz, AktG
third country	Any country that is not a member of the European Union
Unternehmenshandbuch (vormals Handelsgesetzbuch)	Business Code
Verwaltungsvollstreckungsgesetz	Administrative Enforcement Act
Wiener Börse AG	Name of the exchange operating company of the Vienna Stock Exchange

*Note: Translation of the Austrian Stock Exchange Act 2018. This translation serves information purposes only; the German version shall be binding. Translated by Edith Vanghelof*