

Federal Act on Public Offerings of Securities and Other Capital Investments and the Repeal of the Securities Issuing Act (Capital Market Act)

CAPITAL MARKET ACT

Federal Law Gazette (FLG) No. 625/1991 as amended by FLG No. 532/1993, FLG No. 210/1994, FLG I No. 60/1998, FLG I No. 63/1999, FLG I No. 2/2001, FLG I No. 97/2001, FLG I No. 35 and 80/2003, FLG I No. 78/2005, FLG I No. 48/2006, FLG I No. 60/2007, FLG I No. 69/2008, FLG I No. 145/2011, FLG I No. 83/2012, FLG I No. 70/2013, FLG I No. 135/2013, FLG I No. 184/2013, FLG I No. 69/2015, FLG I No. 98/2015, FLG I No. 114/2015, FLG I No. 150/2015, FLG I No. 107/2017, FLG I No. 149/2017 and FLG I No. 48/2018

CAPITAL MARKET ACT

Definitions

§ 1

(1) For the purposes of this federal act the following definitions shall apply:

1. Public offering: A communication to the general public in any form whatsoever that contains adequate information on the terms and conditions of an offering (or an invitation to subscribe) for securities or an investment, and on the securities or investments that give potential investors a basis on which to reach an informed decision on the purchase or subscription of securities. This definition shall also apply to the placement of securities or investments by financial intermediaries.
2. Issuer: A legal entity that issues securities or investments or intends to do so.
3. Investments: Property rights for which no securities are issued, arising out of direct or indirect investments of the capital of several investors for their collective account and collective risk or for the collective account or risk together with the issuer if the administration of the capital invested is not overseen by investors themselves; Investments in the meaning of this federal act are all transferable, securitized rights that are not mentioned in no 4; money market instruments with maturities shorter than twelve months are not subject to the obligation to publish a listing prospectus pursuant to § 2;
4. Securities: Transferable securities in the meaning of Art. 4 (1) 18 of Directive 2004/39/EEC with the exception of money market instruments in the meaning of Art. 4 (1) 19 of Directive 2004/39/EEC with a maturity shorter than twelve months;
- 4a. Equities: Shares and other securities equivalent to shares as well as any other type of transferable securities that grant the holder the right to acquire the first-mentioned securities in the event of their conversion or exercise of the option right; a requirement for this is that the securities mentioned in the latter must be issued by the issuer of the underlying stocks or by a company belonging to the group of said issuer;
- 4b. Non-equity securities: all securities that do not pay dividends;
5. Investor: Anyone who acquires a security the offer of which is subject to the obligation to publish a prospectus, or an investment subject to the obligation to publish a prospectus;
- 5a. Qualified investor: A qualified investor is a professional customer pursuant to § 66 or § 67 Securities Supervision Act 2018 FLG I No. 107/2017 or a suitable counterparty pursuant to § 68

- Securities Supervision Act 2018 unless such person has applied for treatment as a non-professional customer; investment firms and credit institutions shall notify their classification irrespective of the applicable provisions on data protection upon request of the issuer;
6. Persons who make an offer ("offeror"): a legal entity or natural person who makes public offerings of securities or investments;
 7. Small and medium-sized companies (specific SMEs): Companies that according to their most recent single-entity financial statements or consolidated financial statements meet at least two of the three following criteria: an average number of employees in the last business year of fewer than 250, total assets of at the most EUR 43 million and annual net sales revenues of at the most of EUR 50 million;
 8. Credit institutions: Companies in the meaning of Art. 4 (1) 1 of Regulation (EU) 575/2013;
 9. Regulated market: A market in the meaning of § 1 no 2 Stock Exchange Act 2018, FLG I No. 107/2017;
 10. Offering program means a plan which permits the issuance of equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;
 11. Securities issued in a continuous manner or repeatedly with an open-end subscription period (*Daueremission*): bonds with at least two separate tranches of securities of a similar type and/or class issued over a period of twelve months;
 12. Home member state:
 - a) For all issuers of securities not mentioned in lit. b, the EEA member state in which the issuer has its registered office;
 - b) for any issues of non-equity securities whose denomination per unit amounts to at least EUR 1,000, and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, depending on the choice of the issuer, the offeror or the person applying for admission, as the case may be, of the EEA member state where the issuer has its registered office, or the EEA member state where the securities were or are to be admitted to trading on a regulated market or the EEA member state where the securities are offered to the public. The same regime shall be applicable to non-equity securities in a currency other than the euro provided the value of such minimum denomination is approximately 1,000 euro;
 - c) For all third country issuers of securities not mentioned under lit. b, depending on the choice of the issuer, the offeror or the person applying for admission, either the EEA member state where the securities are to be offered to the public for the first time after 1 October 2015, or, the EEA member state where the first application for admission to trading on a regulated market was made contingent on its later selection by the third country issuer
 - aa) if the home member state determined does not coincide with the issuer's choice or
 - bb) in cases pursuant to § 1 no 14 lit. a sublit. bb Stock Exchange Act 2018
 13. Host member state: The EEA member state where an offer to the public is made or admission to trading is sought, when different from the home member state;
 14. Undertakings for collective investments other than the closed type: unit trusts and investment management companies,
 - a) the objective of which is the collective investment of capital deposited by the public and which operate according to the principle of risk diversification, and
 - b) the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of such undertakings;
 15. Units of collective investment undertakings: Securities issued by a collective investment undertaking that represent the rights of the participants in such an undertaking to its assets;

16. Approval: Approval means the positive act at the outcome of the scrutiny of the completeness of the prospectus by the home member state's competent authority, including the consistency of the information given and its comprehensibility;
17. Base prospectus: Base prospectus means a prospectus containing all relevant information as specified in § 7 paras. 1 through 4 and the provisions of the Regulation (EC) No. 809/2004 of the Commission of 29 April 2004 and – in the case of a supplement – changes and supplements concerning the issuer and the securities to be offered to the public or admitted to trading as set out in § 6, and, at the choice of the issuer, the final terms of the offering;
18. Key information: basic, adequately structured information that is to be made available to investors in order to make it possible for them to understand the type and risk of the issuers, the guarantor, and the securities they are being offered or which are to be admitted to a regulated market so as to enable them to reach a decision on which securities to invest in irrespective of § 7 para 2 no 2. Giving due consideration to the respective offer and the respective securities, the key information shall comprise the following aspects:
 - a) a brief description of the risks and essential features that may apply to the issuer and any guarantor including the assets, liabilities and financial situation;
 - b) a short description of the risks related to the investment in the relevant securities and the key characteristics of the investment including any rights attached to the securities;
 - c) the general terms of the offer including an assessment of the costs that the issuer or offeror will bill to the investor;
 - d) Details of the admission to trading;
 - e) Reasons for the offering and use of the proceeds;
19. Companies with small market capitalization: A company listed on a regulated market with an average market capitalization based on its listing of less than EUR 100 million at year-end for the preceding three calendar years.

(Note: para 2 repealed by FLG I No. 83/2012)

(Para 3 repealed by FLG I No. 83/2012)

(4) The regulations contained in this federal act addressing the offeror also apply to issuers if these make a public offering within Austria subject to the obligation to publish a prospectus.

Public Offerings Subject to the Obligation to Publish a Prospectus

§ 2

(1) An initial public offering shall be permissible within Austria on the condition that a prospectus is drawn up and audited in conformity with the provisions of this Act and is published at least one banking workday in advance.

(2) In the case of investments, the scrutiny of the prospectus pursuant to § 8 para 2 shall replace the approval of the FMA. The provisions of §§ 6a, 7a, 7b, 7c, 8, para 1, 8a, 8b, 8c, 10 para 1, 10 para 3 last sentence, 16c and 17b do not apply to public offerings of investments; for the purposes of §§ 15 and 16, a scrutinized prospectus shall be equivalent to an approved prospectus, and the scrutinized, changed and supplemented information shall be equivalent to the approved, changed and supplemented information.

Exemptions from the Obligation to Publish a Prospectus

§ 3

(1) The obligation to publish a prospectus pursuant to § 2 does not apply to:

1. Securities issued by the federal government, Austria's local governments or Oesterreichische Nationalbank as well as irrevocably and unconditionally guaranteed securities issued by the Austrian federal government or local governments;
- 1a. Non-equity securities issued by an EEA member state or by one of an EEA member state's regional or local authorities or central banks, if in the respective EEA member state mentioned, non-equity securities of the Republic of Austria or non-equity securities of the Austrian local

- governments or non-equity securities issued by Oesterreichische Nationalbank are also exempt from the obligation to publish a prospectus to the same extent;
- 1b. Securities unconditionally and irrevocably guaranteed by a member state or by one of a member state's regional or local authorities, if in the respective EEA member state the securities mentioned are guaranteed by the Republic of Austria or by the Austrian local governments these are also exempt from the obligation to publish a prospectus to the same extent;
 2. Non-equity securities issued by an international organization under public law to which Austria belongs and by the European Central Bank;
 3. Non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities
 - a) are not subordinated, convertible or exchangeable;
 - b) do not give a right to subscribe to or acquire other types of securities, and are not linked to a derivative instrument;
 - c) certify the receipt of repayable deposits;
 - d) are covered by a deposit guarantee scheme in the meaning of Directive 94/19/EC.This condition pursuant to lit. c and d shall be waived for securities with a total value of less than EUR 75 million, with this upper limit being calculated over a period of twelve months;
 4. Unit certificates of investment funds pursuant to § 3 para 2 no 30 Investment Fund Act 2011, FLG I No. 77/2011 and unit certificates pursuant to § 1 Real Estate Investment Fund Act, FLG I No. 80/2003 as well as open AIF, which meet the requirements of Art. 1 (2) of the Delegated Regulation (EU) No. 694/2014 supplementing Directive 2011/61/EU with regard to regulatory technical standards determining types of alternative investment fund managers, Official Journal No. L 183 of 24 June 2014 p. 18;
 5. Dividend right certificates pursuant to § 6 Equity Fund Company Act;
 6. Equities that are offered free of charge or allotted to existing shareholders or are planned to be allotted as well as dividends in the form of equities of the same category as the equities for which such dividends are being paid out, if a document has been published that contains information on the number and type of equities and in which the reasons and details of the offer are stated;
 7. Shares issued in substitution for shares of the same class already issued, if the issuance of such new shares does not involve any increase in the issued capital;
 8. Securities offered in connection with a takeover by means of an exchange offer, or offered or allocated on the occasion of a merger or split up, provided that a document has been published containing information which is regarded by the competent authority of the home member state as being equivalent to that of the prospectus; in this case, the requirements of the EU law are to be observed;
 9. A securities or investment offer addressed to investors who for every separate security or investment offer acquire as a minimum amount EUR 100,000 per investor as well as a security or investment offer with a minimum denomination of EUR 100,000;
 10. A securities or investment offer for a total value of less than euro two million in the European Union, with this upper limit being calculated to include any income from offers in the past twelve months for securities or investments exempt from the obligation to publish a prospectus under this clause;
- (Note: No. 10a repealed by Art. 1 no 4 FLG I No. 48/2018)*
11. A securities or investment offer that is addressed exclusively to qualified investors;
 12. Securities offered or allotted to current or former managing directors or employees by their employers or by an associated company or that are planned for the future on the condition that the securities are of the same class as the securities already admitted to trading on the same regulated market, and a document has been published that contains information on the number and type of securities and the reasons and details of the offer; This also applies to a company with its registered office outside the European Union whose securities are admitted to trading on a regulated market or a market of a third country. In the latter case, the release from the obligation shall apply if sufficient information is available including the aforementioned document

at least in one of the languages common in the international finance community, and the Commission has passed a resolution on equivalency for the relevant market of the third country; the FMA may file a petition with the Commission to have such a resolution on equivalency passed in this context; the application shall state the reasons for the equivalency; these may be assumed if the legal and supervisory framework of the third country meets as a minimum the following conditions:

- a) The markets are subject to licensing and effective ongoing supervision and enforcement;
 - b) The markets have clear and transparent rules for the admission of securities to trading provided these securities can be traded in a fair, orderly and efficient manner and are freely negotiable;
 - c) the issuer of the securities are subject to ongoing disclosure obligations which they must comply with in regular intervals so as to ensure a high degree of investor protection; and
 - d) Market transparency and integrity are guaranteed by preventing market abuse in the form of inside dealings and market manipulation;
13. Shares in the capital of the central banks of the EEA member states;
14. Offers addressed to fewer than 150 natural or legal persons per EEA member state who are not qualified investors;

(Note: No. 15 repealed by Art. 1 no 4 FLG I No. 48/2018)

(Note: No. 16 repealed by FLG I No. 78/2005)

(2) Irrespective of paras 1 no 1, 1a, 1b, 2, 3 and 10, issuers, offerors or persons who apply to the admission to trading on a regulated market shall have the right to prepare a prospectus in the meaning of this federal act if the securities are offered to the public or admitted to trading. Should this right be exercised, all legal consequences resulting from the obligation to publish a prospectus pursuant to § 2 or § 46 Stock Exchange Act 2018 apply.

(3) In the case of a later resale of securities and of a final placement of securities by financial intermediaries, no further prospectus publication shall be required if a valid listing prospectus in the meaning of § 6a exists and the issuer or the person responsible for the preparation of the listing prospectus has agreed to its use in a written agreement. Any subsequent resale of securities or investments, which were previously the subject of exemptions from the obligation to publish a prospectus pursuant to para 1 no 9 to 11 and 14 shall be regarded as a separate offer and the definition set out in § 1 para 1 no 1 shall apply for the purpose of deciding whether this resale is deemed a public offering. The placement of securities or investments through financial intermediaries shall be subject to the publication of a prospectus if none of the conditions pursuant to para 1 nos 9 to 11 and 14 are met for the final placement and a public offering exists.

(4) The FMA has the right to define the minimum contents of the documents pursuant to para 1 no 6, 8 and 12 by issuing a decree. This type of publication is governed by § 10.

(5) Should a planned issue result in the situation that the outstanding amount of all funds received pursuant to para 1 no 10 through the issuance of investments without a prospectus over a period of seven years exceed the total amount of five million euro, in departure from para 1 no 10, the relevant issue shall be subject to the obligation to prepare a prospectus pursuant to § 2.

Advertising

§ 4

(1) Every type of advertising that refers to a public offering of securities or investments or to the admission to trading on a regulated market must comply with the principles of paras 2 to 5. Paragraphs 2 to 4 apply only to those cases in which the issuer or the person submitting the application to trading is subject to the obligation to publish a prospectus.

(2) All advertising must indicate that a prospectus including any changed or supplemented information has been published or will be published and must state where said prospectus is available to investors.

(3) Advertisements shall be clearly recognizable as such. The information contained in an advertisement shall not be inaccurate or misleading. This information shall also be consistent with the

information contained in the prospectus or any amendments or supplementary information if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards.

(4) In any case, all information concerning the offer to the public or the admission to trading on a regulated market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the prospectus including any amendments or supplementary information.

(5) When no prospectus is required according to this Federal Law, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where the publication of a prospectus is mandatory, such information shall be included in the prospectus or in a supplement (amendments or supplementary information) to the prospectus in accordance with § 6 para 1.

(6) The FMA shall have the power to exercise control over the compliance of advertising activity relating to a public offer of securities or an admission to trading on a regulated market with the principles referred to in paras 2 to 5. The FMA shall exercise this control, in particular, in the case of founded suspicions of a violation of the provisions of paras. 1 to 5.

Consumer Transactions

§ 5

(1) If a security or investment subject to the obligation to publish a prospectus is offered for sale without publishing a prospectus or information pursuant to § 6, investors, who are consumers in the meaning of § 1 para 1 no 2 Consumer Protection Act, have the right to withdraw their bid or rescind the contract.

(2) Regardless of the right to withdraw or rescind pursuant to para 1, investors who are consumers in the meaning of § 1 para 1 no 2 Consumer Protection Act may cancel a contract if the acquisition of an investment in real estate is not confirmed to them pursuant to § 14 no 3.

(3) The cancellation of the contract must be made in writing; it suffices if the consumer returns the document that contains his or her contract declaration or of the seller, to the seller or his or her agent who took part in the contract negotiations, containing a statement to the effect that the consumer rejects the contract or its continuation. It suffices if the declaration of cancellation is sent within the periods stated in para 4.

(4) The right of cancellation pursuant to para 1 expires one week after the day on which the prospectus or the information pursuant to § 6 is published. The right to cancel pursuant to para 2 expires at the end of one week after the day on which the consumer has received confirmation of the acquisition pursuant to § 14 no 3.

(5) Any agreements contrary to the provisions of paras. 1 to 4 to the disadvantage of the consumer shall be invalid.

(6) All further rights of investors arising out of other statutory provisions shall remain unaffected.

Supplement to the Prospectus

§ 6

(1) Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement (amendment or supplementary information) to the prospectus. Such a supplement (amendment or supplementary information) shall be published and deposited by the applicant (§ 8a para 1) in accordance with at least the same arrangements as were applied when the original prospectus was published and deposited. Simultaneously with the publication, the supplement shall be submitted by the applicant to the FMA for approval and shall be approved by the FMA within seven banking

workdays as of receipt of the application if the conditions pursuant to § 8a are given; the FMA shall send a counterpart of the approval to the Notification Office. In the event that the outcome of the approval procedure is a change to the supplement, such change shall be published including the already published correction notice. Any summaries or translations shall also be modified to account for the information contained in the supplement if necessary.

(1a) In the event of supplements to the listing prospectus, the applicant (§ 8a para 1) must submit in a preliminary step only the unapproved published version of the supplement to the Notification Office with a declaration stating that this version is consistent with the version submitted to the FMA for approval. The sending of the approved final version of the supplement shall be subject to § 8a para 7 sentence 1.

(2) Investors who have already agreed to purchase or subscribe to the securities before the occurrence of a new event, incorrectness or inaccuracy in the meaning of para 1, but prior to the publication of the relevant supplement shall have the right to withdraw their acceptances, exercisable within a time limit no shorter than two working days after the publication of the supplement, provided the new event, incorrectness or inaccuracy pursuant to para 1 occurs before the final closing of the public offering and the delivery of the securities or investments. This period may be prolonged by the issuer or by the offeror. The period for withdrawing acceptance must be stated in the supplement. § 5 shall apply mutatis mutandis. If the investors are consumers in the meaning of § 1 para 1 no 2 Consumer Protection Act, the period mentioned in § 5 para 4 must be stated in the public offering of the investments.

(3) The period pursuant to para 1 shall be shortened by two banking workdays if an audited supplement pursuant to § 8 para 2c has been submitted to the FMA, or, in connection with securities to be admitted to trading on the Vienna Stock Exchange, a statement of opinion pursuant to § 8 para 2c has been submitted.

(4) No approval by the FMA shall be required in the case of supplements (amendments or supplementary information) to listing prospectuses. Instead, such supplements shall be checked pursuant to § 8 para 2. Furthermore, para 1 shall apply to supplements to prospectuses for investments on the condition that the offeror has immediately sent the audit certification of the prospectus auditor to the Notification Office.

Validity of the Prospectus

§ 6a

(1) A prospectus for public offerings or admissions to trading on a regulated market shall be valid for a period of 12 months after publication provided the prospectus is complete and contains any supplements required pursuant to § 6.

(2) In the event of an offering program, the base prospectus, previously filed, shall be valid for a period up to 12 months.

(3) In the case of non-equity securities referred to in § 7 para 4 no 2, the prospectus shall be valid until the discontinuation of the continuous or repeated issue of the concerned securities.

(4) A registration document, as referred to in § 7 para 3, which has been previously filed, shall be valid for a period of up to 12 months.

(5) The registration document, updated in accordance with § 6 or § 7a para 4, accompanied by the securities description, and the summary description shall be deemed to constitute a valid prospectus.

Content of the Prospectus

§ 7

(1) The prospectus must contain all information which, according to the particular nature of the issuer and of the securities/investment offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attached to such securities. This information shall be presented in a form easy to analyze and easily comprehensible.

(2) The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. The summary shall, in a brief manner and in non-technical language, convey the key information in the language in which the prospectus was originally drawn up. The format and content of the summary prospectus together with the prospectus must provide useful information on the main aspects of the concerned securities in order to help investors decide the question of whether or not to invest in this security. The summary shall be written in uniform format in order to facilitate the comparison of summaries with other similar securities and shall furthermore contain the complete key information on the concerned securities in order to support investors in reaching their investment decisions. The summary must furthermore include notices warning that

1. the summary is to be understood as an introduction to the prospectus, and
2. investors should rely on their scrutiny of the entire listing prospectus when reaching investment decisions, and
3. in the case that claims are filed with a court of law based on the information contained in a listing prospectus, the investor acting as claimant under the national legislation of an EEA member state shall bear the costs of any translation of the listing prospectus prior to the start of legal proceedings, and
4. those persons that have requested the summary including its translation and notification may be made liable but only in the case that the summary is misleading, incorrect or inconsistent when read together with the other parts of the listing prospectus.

If the listing prospectus concerns the admission of non-equity instruments with a minimum denomination of EUR 100,000 to trading to a regulated market, no summary shall be required.

(3) The issuer, offeror or person requesting the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities to be offered to the public or to be admitted to trading on a regulated market.

(4) For the following types of securities, the prospectus may, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market, consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market:

1. non-equity securities, including warrants in any form, issued under an offering program;
2. non-equity securities issued in a continuous or repeated manner by credit institutions,
 - a) where the sums deriving from the issue of the said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date, and
 - b) where, in the event of the insolvency of the concerned credit institution, the said sums are intended, as a priority, to repay the principal and accrued interest falling due, without prejudice to the provisions of Directive 2001/24/EC.

The information given in the base prospectus shall be supplemented, if necessary, in accordance with § 6, with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market. If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the FMA or with an entity commissioned by the FMA for a reasonable fee, and the FMA or the entity commissioned by the FMA with this task for a reasonable fee shall notify the competent authority of the host member state(s) as soon as a public offering is made and the sending, filing or notification becomes practicable, and if possible, prior to the start of the offering or admission to trading. If the FMA is the competent body, it must notify the final terms to ESMA. The final terms shall contain only information concerning the description of the securities and do not serve as a supplement to the base prospectus. The issuing volume and the issue price shall be included in the final terms or must be explained therein in the meaning of para 5 no 1.

(5) In the event that the final offer price and the issuing volume of the securities that will be offered to the public are not mentioned in the prospectus,

1. the criteria and/or the conditions in accordance with which the above values are to be determined, or in the case of the offer price, the maximum price, are to be mentioned in the prospectus or
2. the prospectus must permit the withdrawal of acceptance of the purchase or subscription to securities within no less than two banking workdays after the final offer price and the total number of securities of the public offering have been filed.

The final offer price and volume of the securities issue shall be filed with the FMA or an organization charged with such task by the FMA for an appropriate fee and published in accordance with § 10 para 3.

(6) By issuing an official notice, the FMA may authorize the omission of certain information from the prospectus, which is otherwise required pursuant to this federal act or pursuant to Regulation (EC) No. 809/2004 or pursuant to the delegated legal acts under Art. 7 (1) of Directive 2003/71/EC, upon request of the issuer, the offeror or the person applying for the admission of the securities to a regulated market, if

1. the disclosure of such information would be contrary to the public interest, or
2. the disclosure of such information would be seriously detrimental to the issuer, provided that omission would not be likely to mislead the public with regard to the facts and circumstances essential for reaching an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates, or
3. such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not of such nature so as to influence the assessment of the financial position and prospects of the issuer, offeror or guarantor.

(7) In the exceptional event that certain information required by this federal act or by Regulation (EC) No. 809/2004 or pursuant to delegated legal acts pursuant to Art. 7 (1) of Directive 2003/71/EC to be included in the prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, this requirement shall not apply.

(7a) If securities are guaranteed by a member state, by the issuer, by the offeror or by the person applying for admission to trading on a regulated market, these are not under the obligation to supply information on the guarantor when preparing the listing prospectus.

(8) The prospectus shall be drawn up in accordance with Regulation (EC) No. 809/2004. Paragraphs 2 to 7 do not apply to prospectuses for investments. The prospectus for investments shall be drawn up pursuant to Schedule C in German or in English.

(8a) In departure from para 8, a simplified prospectus must be prepared pursuant to Annex F provided the securities or investment offer has a value in the European Union of less than EUR five million during a period of twelve months. In the case of securities, it is possible to prepare a listing prospectus pursuant to para 8, first sentence, on a voluntary basis instead. Paragraphs 2 to 7 do not apply to investments. The simplified prospectus for investments must be prepared in German or English. Should a planned issue result in a situation that within twelve months the value reaches or surpasses an amount of five million euro in the European Union through the issuance of securities or investments, § 7 para 8 shall apply to issue concerned. Issues pursuant to the Austrian Act on Alternative Forms of Financing shall be included in the calculation. This shall apply to securities irrespective of § 3 para 1 no 10.

(9) The FMA is authorized to collect a fee for safekeeping the documents pursuant to paras 4 and 5 by issuing a decree. These fees shall not exceed the average level of fees for official acts taking into consideration a fixed amount component.

§ 7a

(1) It shall be permitted for information to be incorporated into the prospectus by reference to one or more previously or simultaneously published documents that have been approved in accordance with

this federal act or the Stock Exchange Act and deposited with the FMA as competent authority of the home member state or by an organization charged with such task by the FMA for an adequate fee. The information must be the most recent information available to the issuer. The summary shall not be permitted to contain any information in the form of a reference.

(2) When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information.

(3) An issuer whose registration document has already been approved by the FMA shall only then be required to prepare a description of the securities and a summary if the securities are being offered to the public, or, for which admission to trading on a regulated market has been applied for.

(4) In such case, the description of the securities must contain information that would usually be included in the registration document if there have been massive changes or new developments since the approval of the last update of the registration document or supplement pursuant to § 6 that could influence the assessment of the investor. The description of the securities and the summary are approved separately.

(5) If an issuer has filed one registration document that has not been approved, all documents including updated information are to be approved.

Language Policy

§ 7b

(1) Where an offer to the public is made or admission to trading on a regulated market is sought only in Austria, the prospectus shall be drawn up and published in German or English or in one of the other languages recognized by the FMA in a decree.

(2) Prospectuses that are otherwise submitted to the FMA as competent authority are to be drawn up in the languages mentioned in para 1, but may, instead of these languages, also be drawn up in any other language customary in the sphere of international finance at the choice of the issuer, the offeror or the person submitting the application for admission to trading. In such cases, the FMA is authorized to require the publication of a translation of the summary in German by issuing a decree. Should the prospectus submitted to the FMA as competent authority of the home member state relate to securities that are not being offered to the public within the country nor for which an application for admission to trading on a regulated market is being submitted, the prospectus may be drawn up in another language customary in the sphere of international finance apart from the languages mentioned in para 1. Should the prospectus submitted to the FMA as competent authority of the home member state relate to non-equity securities with a minimum denomination of EUR 100,000 for which admission to trading on a regulated market is to be applied, the prospectus may also be drawn up in another language customary in the sphere of international finance apart from the languages mentioned in para 1.

(3) Prospectuses notified to the FMA only according to § 18 of EU Directive 2003/71/EC may be published in another language customary in the sphere of international finance apart from the languages mentioned in para 1 at the discretion of the issuer, offeror or the person applying for admission to listing. In this case, the FMA has the right to require a translation of the summary to be published in German by issuance of a decree.

Issuers Incorporated in Third Countries

§ 7c

(1) As the competent body of the home member state, the FMA may authorize a prospectus for an offering to the public or for the admission to trading on a regulated market drawn up by an issuer incorporated in a third country in accordance with the laws of such third country provided that

1. the prospectus has been drawn up in accordance with international standards set by international securities commission organizations, including the IOSCO disclosure standards; and
2. the information requirements, including information of a financial nature, are equivalent to the requirements under this federal act.

(2) In the case of an approved offer in Austria to the public or admission to trading on a regulated market of securities, issued by an issuer incorporated in a third country, the requirements set out in § 7b and 8b shall apply.

Scrutiny of the Prospectus

§ 8

(1) The application submitted to the FMA for approval of the prospectus shall include the prospectus and, if applicable, the signature of the prospectus auditor pursuant to para 2a or the statement of opinion of Wiener Börse AG pursuant to para 2c. The application as well as all versions of the prospectus including the final approved version must be submitted electronically to the FMA. The FMA may issue a decree to define the method for unambiguously determining the assignment of the prospectus to the issuer using state of the art technology. When a prospectus is presented in accordance with these rules, it shall be deemed an irrefutable assumption that it was produced by the issuer or by a third party charged with the task. The third and fourth sentence pursuant to para 2c shall apply also to the signature of the prospectus auditors pursuant to para 2a and the signed statement of opinion of Wiener Börse AG.

(2) The issuer shall duly sign the prospectus and add the note “as issuer” to the signature. This signature constitutes the irrefutable assumption that the prospectus was prepared by the issuer and for the issuer. A prospectus for investments must be duly signed by

1. a specialized association for auditing of credit cooperatives according to the Schulze-Delitsch system or according to the Raiffeisen system, or
2. the auditing body of the auditing association of the savings banks, or
3. a court-certified auditor or auditing firm, or
4. by
 - a) a credit institution in the meaning of § 1 para 1 Banking Act licensed for transactions pursuant to § 1 para 1 no 9, 10 or 11 Banking Act and with an amount of more than EUR 18.2 million in eligible own funds; or
 - b) a credit or financial institution licensed to carry on business in Austria pursuant to §§ 9, 11 or 13 Banking Act through a branch office or within the scope of the freedom to provide services as long as it is licensed to carry on a similar business in its home member state (Art. 4 (1) 43 Regulation (EU) 575/2013), as stated in § 1 para 1 no 9, 10 or 11 Banking Act and has at its disposal an equivalent of more than EUR 18.2 million in eligible own funds as to the correctness and completeness and, if given, signed by the auditor stating place and date, and adding “as prospectus auditor”.

The abovementioned note evidences the irrevocable assumption that the auditor has scrutinized the prospectus and has found it to be correct and complete. The issuer shall provide the auditor with all documents he or she might need to enable the audit of the prospectus as to its integrity and correctness without any reservations. Based on the last report by the auditor of the issuer’s financial statements pursuant to § 273 of the Austrian Business Code, insofar as the issuer is subject to a statutory audit requirement, the prospectus auditor shall examine with due professional care all the documents the issuer must provide to determine if the prospectus contains the information required pursuant to § 7 and if the legal and financial status are represented correctly. The documents to be provided by the issuer shall be audited by random sampling as to their correctness and integrity. Should there be instances of suspected incorrectness or lack of completeness in the documents or prospectus information, the auditor must take further auditing measures to clarify the matter; should the suspicion be confirmed, the auditor shall take measures to carry out the required corrections and supplements in the prospectus. Auditors pursuant to no 3 shall acquire a liability insurance policy with one or more domestic insurers licensed to operate an insurance business that covers the risk arising from the auditing activity, with the amount covered having to be at least EUR 3.65 million per yearly insurance period and the insurance premium being paid up in full before the prospectus is published; the insurer shall inform the Notification Office in writing of the existence and receipt of the premium prior to the publication of the prospectus.

(2a) In the case of prospectuses for securities, para 2 shall apply on the condition that the scrutiny criteria for the prospectus include completeness, coherence and comprehensibility of the information in the prospectus. However, the audit method by random sampling pursuant to para 2 shall not be sufficient. The signature of the prospectus auditor evidences the irrevocable assumption that the auditor has scrutinized the signed prospectus and has found it to be complete, coherent and comprehensible. Should the applicant submit a prospectus pursuant to § 8a already audited pursuant to this paragraph, the deadlines pursuant to § 8a shall be shorter by three banking workdays in each case. When approving a prospectus pursuant to § 8a, the FMA has the right to rely on the statement of Wiener Börse AG and to base its notice of approval on said statement unless the FMA has founded doubts regarding the correctness and completeness of the prospectus audit, or the expertise or due diligence of Wiener Börse AG, or should have had such doubts had it applied the appropriate due care. This shall apply equally to prospectus audits by prospectus auditors charged with the task by the FMA, especially if no audit note of the auditor has been attached to the prospectus. In no case shall prospectus auditors be considered bodies of the FMA in the meaning of the Act on the Public Liability.

(2b) The FMA has the obligation to maintain a list of adequately qualified auditors and accountancy firms from which the prospectus auditor can be selected should such auditor be selected from this profession. The Chamber of Accountants may submit proposals to the FMA of suitable candidates for the list.

(2c) In the case of prospectuses for securities that are to be admitted to trading on the Vienna Stock Exchange, the period pursuant to § 8a is only then shortened by three banking workdays if the applicant has attached a statement by Wiener Börse AG pursuant to § 8a stating that it has scrutinized the prospectus and found it to be complete, coherent and comprehensible. When approving a prospectus pursuant to § 8a, the FMA has the right to rely on the statement of Wiener Börse AG and to base its notice of approval on said statement unless the FMA has founded doubts regarding the correctness and completeness of the prospectus audit or of the expertise or due diligence of Wiener Börse AG or if it should have had such doubts had it applied the appropriate due care. This shall apply equally to statements by Wiener Börse AG commissioned by the FMA itself, especially if there is no such statement of Wiener Börse AG attached to the prospectus. In no case shall prospectus auditors be considered bodies of the FMA in the meaning of the Act on the Public Liability.

(3) If the nominal value of the entire issue or the selling price of the entire issue or the total of the capital invested is more than EUR 730,000 or its corresponding value in a foreign currency or in a currency unit, the prospectus audit may be done by

1. an auditor pursuant to para 2 no 1 only in the first case if the issuer
 - a) belongs to the specialized association of credit cooperatives according to the Schulze-Delitsch system as a member,
 - b) is a credit or financial institution in which one or more members of the specialized association pursuant to letter a, directly or indirectly hold a total of at least 25%;
2. an auditor pursuant to para 2 no 1 only in the second case if the issuer is a member of
 - a) belongs to the specialized association of credit cooperatives according to the Schulze-Delitsch system as a member,
 - b) is a credit or financial institution in which one or more members of the specialized association pursuant to lit. a directly or indirectly hold a total of at least 25%;
3. an auditor pursuant to para 2 no 2, second case only if
 - a) belongs to the specialized association of credit cooperatives as a member,
 - b) is a credit or financial institution in which one or more members of the specialized association pursuant to lit. a directly or indirectly hold a total of at least 25%;

Securities and investments of the same issuer that were the subject of a public offering within the preceding twelve months shall be included when calculating the total amount.

(4) Prospectus auditors shall only be accepted if there are no reasons for exclusion. Reasons for exclusion are those in the meaning of the facts listed in § 271 and § 271a of the Austrian Business Code.

(5) The auditing of the prospectus by a credit or financial institution in the meaning of para 2 no 4, for which a reason for exclusion is given in the meaning of para 4, shall be permitted in spite of para 4 if the prospectus is also audited by an additional auditor in the meaning of para 2 nos 1 to 4 against whom there is no reason for exclusion. If there are reasons for assuming partiality on the part of the prospectus auditor in the meaning of § 271 and § 271a Austrian Business Code, the prospectus as well as any modifications or supplements to it, shall only then be considered audited if in addition to the partial prospectus auditor another impartial prospectus auditor in the meaning of para 2 nos 1 to 4, has also duly signed the audit. The reversal of the burden of proof pursuant to § 11 para 1 shall be borne by the credit or financial institution against whom reasons for exclusion are given. The restriction stipulated in § 8 para 3 for auditors shall not apply if these are additional auditors in the meaning of this paragraph.

(6) If the prospectus auditor is a credit institution, regardless of the reasons for exclusion that may exist pursuant to para 4, the issuer may not, either directly or indirectly, hold shares of the credit institution that reach or surpass ten percent of its nominal capital.

(7) The existence of a reason for exclusion may not be used as an argument against anyone who quotes incorrect or incomplete information from the prospectus.

(8) The application for approval of the prospectus shall be submitted to the Notification Office together with the prospectus, including the required signatures, and if applicable, bearing the signature of the prospectus auditor and the offeror in a timely manner so as to ensure that it is received at the latest on the banking workday of the disclosure.

Approval of the Prospectus

§ 8a

(1) The FMA in its function as the competent administrative body of the home member state shall approve the prospectuses submitted for approval by the issuer or offeror or by a person applying for admission to trading on a regulated market provided the prospectus is complete, coherent and comprehensible and complies with any other conditions prescribed by this federal act. The FMA has the right to use the services of the persons listed in § 8 para 2 as prospectus auditors or otherwise as experts in the approval procedures to help assess the completeness, coherence and comprehensibility of the prospectuses. When approving prospectus applications for securities that are to be admitted to trading on Wiener Börse AG, the FMA, prior to approval, has the right to obtain a statement from Wiener Börse AG in the meaning of § 8 para 2c unless such a statement has already been attached to the application. Any fees charged by prospectus auditors, experts or Wiener Börse AG as an expert providing an expert opinion are to be borne in all cases by the applicant.

(2) The FMA has the authority to

1. require issuers, offerors or persons asking for admission to trading on a regulated market to include supplementary information, if necessary for investor protection, in the prospectus;
2. require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents;
3. require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to make the offer to the public or apply for admission to trading, to provide information;
4. to suspend a public offering or the admission to trading for a maximum of ten consecutive banking workdays if it has reasonable grounds to suspect a violation of the provisions of this federal act or of §§ 46 et seq Stock Exchange Act 2018;
5. prohibit or suspend advertisements for a maximum of ten consecutive banking workdays on any single occasion if it has reasonable grounds for believing that the provisions of this federal act have been breached;
6. prohibit a public offer if it finds that the provisions of this federal act have been breached or if it has reasonable grounds for suspecting that they may be breached;
7. suspend or ask the relevant regulated markets to suspend trading on a regulated market for a maximum of ten consecutive banking workdays on any single occasion if it has reasonable

- grounds for believing that the provisions of this federal act or of §§ 46 et seq Stock Exchange Act 2018 have been breached;
8. prohibit trading on a regulated market if it finds that the provisions of this federal act or of §§ 46 et seq Stock Exchange Act 2018 have been breached;
 9. make the fact public that an issuer is failing to comply with its obligations; § 16a para 2 shall apply.
- (3) The FMA shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, of its decision regarding the approval of the prospectus within ten banking workdays of the submission of the prospectus. If the FMA fails to give a decision on the prospectus within the time limits laid down in this paragraph and in para 4, this shall not be deemed to constitute approval of the application.
- (4) The time limit referred to in para 3 shall be extended to 20 banking workdays if the public offer involves securities issued by an issuer who does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.
- (5) If the FMA ascertains, on reasonable grounds, that the documents submitted are incomplete or that supplementary information is needed, the time limits referred to in paras 3 and 4 shall apply only from the date on which such information is provided by the issuer, the offeror or the person asking for admission to trading on a regulated market. In the case referred to in para 3, the competent authority shall notify the issuer if the documents are incomplete within ten banking workdays of the submission of the application.
- (6) The FMA may transfer the approval of a prospectus to the competent authority of another EEA member state if the European Securities and Market Authority – ESMA (Regulation (EU) No. 1095/2010) has been informed in advance of this and said competent authority agrees. This transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three workdays from the date of the decision taken by the FMA. The FMA may also accept transfer of approval for a prospectus from a competent body of the home member state that is an EEA member state. The time limit referred to in para 3 shall apply from the date of the decision of the competent body transferring the approval. Any false behavior on the part of the competent body of another EEA member state shall not be attributed to the Republic of Austria as the responsible legal entity. Article 28 (4) of Regulation (EU) No. 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph.
- (7) The FMA must send the prospectus granted approval to the Notification Office on the day of the approval. The FMA must make the prospectus available immediately after approval by the ESMA. This shall also apply to the approval of changes and supplements.
- (8) After admission of the securities to trading, the FMA shall also have the power to
1. require the issuer to disclose all material information that may have an effect on the assessment of the securities admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market;
 2. suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests;
 3. ensure that issuers whose securities are traded on regulated markets comply with the obligations provided for in § 102 and § 103 of Directive 2001/34/EC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position in all member states where the offer to the public is made or the securities are admitted to trading;
 4. conduct on-site inspections to verify compliance with the provisions of this federal act and the implementing measures of Directive 2003/71/EC.
- (9) FMA must inform ESMA at the same time of the approval of the prospectus and all supplements to the prospectus and likewise inform the issuer, the offeror or person submitting an application for admission to trading on a regulated market. FMA must moreover also send a copy of the prospectus and its supplements to ESMA.

Community-wide Validity of Approved Prospectuses

§ 8b

(1) Without prejudice to § 8c – in cases in which Austria is not the home member state – the prospectus for an offer to the public or admission to trading on a regulated market approved by the home member state and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host member states, provided the FMA and ESMA have been informed (notified) pursuant to Article 18 of Directive 2003/71/EC. The FMA shall not conduct any approval procedures for such prospectus. This prospectus shall be deemed approved in the meaning of this federal act.

(2) If any significant new factors, material mistakes or inaccuracies, as referred to in § 6, have arisen since the approval of the prospectus, the FMA – if it has gained such knowledge – may draw the attention of the competent authority of the home member state to the need for new information (publication of a supplement to be approved as provided for in Article 13 para 1 Directive 2003/71/EC).

(3) The FMA as the competent authority of the home member state, shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three banking workdays following that request, or, if the request is submitted together with the prospectus, within one banking workday after the approval of the prospectus, provide the competent authority of the host member state and ESMA with a certificate of approval attesting that the prospectus has been drawn up in accordance with Directive 2003/71/EC and with a copy of the said prospectus. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus. The issuer or the person responsible for the preparation of the listing prospectus will be sent the certificate of approval at the same time as it is sent to the competent authority of the host member state.

(4) Any application of the provisions of § 7 paras 6 and 7 shall be stated in the certificate as well as its justification.

Non-compliance of Issuers from the EEA

§ 8c

(1) Where the FMA of the host member state finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that breaches have been committed of the obligations of the issuer by reason of the fact that the securities are admitted to trading on a regulated market, it shall refer these findings to the competent authority of the home member state and ESMA.

(2) If, despite the measures taken by the competent authority of the home member state or because such measures prove inadequate, the issuer or the financial institution in charge of the public offering persists in breaching the relevant legal or regulatory provisions, the FMA as the competent authority of the host member state, after informing the competent authority of the home member state and ESMA, shall take all the appropriate measures to protect investors. The Commission and ESMA shall be informed of such measures at the earliest opportunity.

Restrictions on the Issuance of Debt Securities

§ 9

(1) If required to prevent any serious hindrances to the functioning of the capital market and after hearing Oesterreichische Nationalbank, the Federal Minister of Finance shall be empowered to issue a decree stipulating that for a period lasting at most of six months

1. the initial public offering of debt securities denominated in money or of special types of debt securities, may only take place with the Minister of Finance's written authorization and/or
2. before the initial public offering of debt securities denominated in money or of special types of debt securities, a risk assessment of the issuer and of the issue according to internationally recognized criteria shall be published pursuant to § 10 para 1 and sent to the Notification Office.

(2) Licenses to operate pursuant to para 1 no 1 shall only be granted if the functioning of the capital market is not at risk.

(3) Only firms are suited to assess the risk pursuant to para 1 no 2 that can furnish proof of at least ten years of recognized experience in this field or a company that has at least one management and one representative body that can give proof of at least ten years of recognized experience in the field.

(4) Para 1 does not apply to Oesterreichische Nationalbank shall inform the Ministry of Finance of any observations or facts in the area of capital markets that are of basic significance or of special importance, and upon request and as deemed necessary by the Ministry of Finance, it shall provide detailed specific and expert explanations as well as any documents and expert opinions. Furthermore, it shall give computer-assisted access to the Ministry of Finance at all times to relevant data pertaining to the capital market, on the basis of

1. reports pursuant to this federal act and decrees issued by virtue of this act, and
2. data processed in aggregate form based on reports according to the Foreign Exchange Act that are necessary for the Ministry of Finance to fulfill its duties pursuant to para 1.

Publication of the Prospectus

§ 10

(1) No prospectus shall be published until it has been approved by the FMA.

(2) Once approved, the prospectus shall be published by the issuer, offeror or person requesting admission to trading on a regulated market as soon as practicable, but in any case, at a reasonable time in advance of, and at the latest one banking workday prior to the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offering of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six banking workdays before the end of the offer.

(3) The prospectus shall be deemed available to the public in the meaning of this federal act when published

1. in the “*Amtsblatt zur Wiener Zeitung*” (Official Bulletin of the Republic of Austria) or otherwise in at least one newspaper with nation-wide circulation, or
2. in a printed form to be made available, free of charge, to the public at the competent bodies of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
3. on the issuer’s website or on the website of the financial intermediaries placing or selling the securities, including paying agents; or
4. on the website of the regulated market to which admission to trading is being sought; or
5. on the website of the FMA or on the website of an organization charged with this task for an adequate fee if the FMA has decided to offer this service.

If the listing prospectus is published pursuant to nos 1 or 2, the issuer, the offeror or person submitting an application for admission to trading on a regulated market must publish the listing prospectus also on a website pursuant to nos 3, 4 or 5. The FMA shall – if Austria is the home member state – be notified in advance of how the prospectus will be published and where it can be obtained; the criteria for the publication pursuant to no 1 may be defined by decree issued by the FMA.

(4) In any case, the issuer shall publish a notice – if Austria is the home member state – pursuant to para 3 no 1 stating how the prospectus has been made available; otherwise pursuant to para 3 and where it can be obtained.

(5) The FMA shall publish on its website or on the website of an organization charged with this task for an adequate fee over a period of twelve months, at its discretion, all the prospectuses approved, or at least the list of prospectuses approved in accordance with § 8a, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.

(6) In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information making up the prospectus may be published and circulated

separately provided the said documents are made available, free of charge, to the public, in accordance with the provisions of para 3. Each document shall indicate where the other constituent documents of the full prospectus may be obtained.

(7) The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, must at all times be identical with the original version approved by the FMA.

(8) Where the prospectus is made available by publication in electronic form, a paper copy must nonetheless be delivered to the investor, upon his or her request and free of charge, by the issuer, the offeror, the person requesting admission to trading or by the financial intermediaries placing or selling the securities.

(9) The FMA as the competent body of the host member state must publish on its website a list of the certificates received pursuant to § 8b on the approval of prospectuses and all supplements to prospectuses, if applicable, including an electronic link (hyperlink) to the documents on the website of the competent authority of the home member state, of the issuer or of the regulated market of the documents published. The list published must always be kept current and every entry must be made available on the website for at least twelve months.

Liability for the Contents of the Prospectus

§ 11

(1) Investors shall have the right to claim damages arising from placing their trust in the correctness or integrity of the information contained in the prospectus or any other information required to be published pursuant to this federal act (§ 6) that is relevant for assessing securities or investments, from the following entities:

1. the issuers for any incorrect or incomplete information for which they are responsible themselves or for which their staff or any other persons whose services were used to draw up the prospectus are responsible;
2. the prospectus auditors for any incorrect or incomplete information due to their own negligence or of their staff or of any other persons whose services were used to audit the prospectus;
- 2a. the prospectus auditors for prospectuses of investments for any incorrect or incomplete scrutiny due to their own gross negligence or of their staff or of any other persons whose services were used to audit the prospectus;
- 2b. Wiener Börse AG for prospectuses of securities admitted to trading on Vienna Stock Exchange, but only for incorrect or incomplete information pursuant to § 8 para 2c caused by its own gross negligence or by its staff or other persons whose services were used to prepare the statements pursuant to § 8;
3. any persons who, either in their own name or for third parties, have accepted the investor's contract declaration, and from the broker of the contract if the person acting as intermediary is professionally engaged in trading or brokering securities or investment transactions and these persons or their staff knew of the incorrectness or incompleteness of the information pursuant to no 1 or of the audit, or were unaware of this due to gross negligence,
4. the auditor of the annual accounts, who, knowing of the incorrectness or incompleteness of the information in the meaning of no 1 and knowing that the annual accounts confirmed by him or her form part of the prospectus, has given the annual accounts an audit opinion.

In the event that a reason for the exclusion of the prospectus auditor is given, the investor shall not have the obligation to prove the fault pursuant to no 1 or 2. Liability vis-à-vis investors pursuant to no 3 is given only for those investors whose contract declaration was accepted by a liable party or if this liable party mediated the purchase of securities or investments. Liability for a summary including any translation shall be given if it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus. The same shall apply when it is read together with the other parts of the prospectus and not all of the material information has been provided so as to enable investors to reach an informed decision when evaluating whether to invest in such securities. The summary shall also contain a clear warning drawing attention to this fact and with respect to the aforementioned

statement. The persons pursuant to nos 1 and 2 including any guarantors shall be clearly identified in the prospectus by their names and functions or, in the case of legal persons, their names and registered offices; furthermore, the prospectus shall contain the wording of the respective declarations made by the persons mentioned in § 8 as well as by any guarantors to the effect that the information contained in the prospectus is correct and that the prospectus makes no omission likely to affect its import. Anyone who makes an offer that is subject to the obligation to publish a listing prospectus within Austria without the consent of the issuer pursuant to § 3 para 3 shall be liable vis-à-vis investors who have accepted such offer or invitation to subscribe in the place of the issuer pursuant to no 1, provided the issuer did not know or should have known that the prospectus pursuant to § 2 was the object of the offer made without its consent, and therefore, the issuer notified its unlawful use to the Notification Office and the FMA without delay after having gained knowledge of the unlawful use or should have known of said use. The Notification Office must proceed according to § 12 para 2 with the notifications received.

(2) In the case of securities or investments of foreign issuers, the party making an offering, which is subject to the obligation to publish a prospectus within the country, shall also be liable pursuant to para 1 no 1.

(3) If liability is borne by more than one party, liability is undivided. Liability is not reduced by the fact that others are also liable to compensate the same damages.

(4) Liability towards investors may not be restricted nor excluded in advance.

(5) Compensation claims for damages may not be derived from the fact that securities or investments were not acquired due to incorrect or incomplete information contained in the prospectus.

(6) Unless the damaging action was done intentionally, the amount of the liability towards each individual investor is limited to the purchasing price paid plus fees and interest as of the date of purchase. If the acquisition was not paid for, the last price paid plus fees and interest as of the date of acquisition shall apply.

(7) Claims based on this federal act must be filed with a court within ten years of the offering subject to the publication of a prospectus; otherwise, the right to claim damages expires.

(8) Claims for damages arising from violations of other legal provisions or of breaches of contract shall remain unaffected by these provisions.

Notification Office

§ 12

(1) The Notification Office pursuant to this federal act is Oesterreichische Kontrollbank Aktiengesellschaft. The Notification Office shall be responsible for checking securities prospectuses and other information received in accordance with this federal act with respect to the approval of the FMA or a notification confirmation and for their safekeeping, and shall check investment prospectuses and other information in accordance with this federal act for the existence of the required signatures (issuer, prospectus auditor) pursuant to § 8 para 2 or § 14 no 2. If the FMA does not conduct the approval procedure pursuant to § 8b para 1, it shall send the prospectus including the confirmation of the notification to the Notification Office; in such case, the scrutiny of the prospectus by the Notification Office regarding compliance with the minimum signature requirements shall be waived; the Notification Office may destroy the prospectuses and any other information received pursuant to this federal act, at the earliest, 15 years after it has been filed with the Notification Office. The Notification Office has the right to charge the parties subject to the notification obligation an adequate fee for its services.

(2) The Notification Office has the obligation to answer inquiries as soon as possible but within five working days regarding inquiries relating to securities or investments to find out if a prospectus or other information pursuant to this federal act has been published and submitted to the Notification Office, and if the prospectus or other information pursuant to this federal act has all the signatures and the approval or notification confirmation of the FMA required by this federal act. At the same time, inquiries shall be answered with respect to the publication medium, date of publication, place where it can be obtained as well as insurer of the prospectus auditor. To this end, the offeror shall inform the Notification Office immediately of the publication medium, date of publication and place where it is

available unless this is contained in the prospectus or in the information submitted on any changes or supplements. Upon request, the Notification Office shall provide a copy of the prospectus, or any other information, to persons interested for a cost-covering fee.

(3) The Notification Office also has the duty to

1. conduct a computer-assisted evaluation of the information in the prospectuses about the securities, the investments and the issuers to obtain statistics if this is necessary to fulfill its duties according to this federal act;
2. report to the Federal Ministry of Finance, to the FMA and to Oesterreichische Nationalbank regularly on developments observed on the capital market as well as immediately in any special cases;
3. provide computer-assisted access to the FMA and Oesterreichische Nationalbank at all times to the information based on the reports pursuant to this federal act and to decrees issued under this federal act.

(Note: Paras 4 and 5 repealed by FLG I No. 78/2005)

Issuing Calendar

§ 13

(1) Anyone having the intention to conduct an initial offering of securities or investments within the country must inform the Notification Office as soon as possible of the issuer, the probable point in time, the total volume, the denomination, the maturity and, in the case of public offerings, the other conditions as well as circumstances, if given, that are grounds for an exemption from the prospectus obligation pursuant to § 3; certain information that becomes known only shortly before the subscription period may be submitted afterwards. When stating the circumstances responsible for the exemption from the obligation to publish a prospectus, the facts pertaining to this exemption shall expressly be indicated in accordance with § 3 or provisions of other federal acts. Furthermore, in the case of securities issues or of securitized investments pursuant to § 1 para 1 no 3, the offeror must disclose the ISIN number assigned for the purpose of unique identification by the Oesterreichische Kontrollbank Aktiengesellschaft (domestic ISIN issuing body) or by a foreign ISIN issuing body or an equivalent identification.

(2) The notification obligation pursuant to para 1 does not apply to securities or investments pursuant to § 3 para 1 nos 4 to 6, 10, 12 and 13.

(3) The Notification Office shall report the information received anonymously on a monthly basis in the form of a preview. The Notification Office shall disclose the publication medium and any changes in the Official Gazette "Amtsblatt zur Wiener Zeitung". It shall reply to inquiries by issuers on planned issues anonymously.

(4) If the Notification Office, based on the notifications received pursuant to para 1, has reasonable doubts regarding the application of the exemption from the obligation to publish a prospectus in the case of an issue – contrary to the information sent pursuant to para 1 – it shall inform the offeror of such circumstances. Should the Notification Office have founded suspicions based on notifications received pursuant to para 1 of an act sanctionable by a court of law pursuant to § 15 para 1 no 1 due to the fact that a public offering has been made without the required prospectus pursuant to § 2, it shall immediately inform the FMA.

(5) Claims for damages may not be filed on the grounds that notifications to the FMA pursuant to para 4 have been made wrongfully and with gross negligence or have not been made at all.

Special Provisions for Investments in Real Estate

§ 14

Undertakings for collective investments in real estate are given if investments are issued or offered by issuers who make profits directly or indirectly from capital invested for the purpose, or in actual practice, of generating income from the rental or transference of real estate to third parties. For these types of real estate undertakings for collective investments, the following provisions shall also apply:

1. The prospectus (§ 7) shall be supplemented by the information contained in Schedule D;

2. The auditing of the prospectus shall be carried out by an auditor pursuant to § 8 para 2 nos 3 or 4; § 8 para 2 last sentence shall apply provided that the coverage amount of the insurance policy is a minimum of EUR 18.2 million per yearly insurance period;
3. The investor shall receive a confirmation in writing regarding the acquisition of an investment upon execution of the contract; the confirmation shall contain the main characteristics of the investment, in particular, its equivalent value and the legal status of the investor as well as the publication medium and date of publication of the prospectus as well as any other information pursuant to this federal act; the confirmation shall be drawn up by the issuer; if the issuer is a foreigner, then by the offeror; if the issuer and offeror are both foreigners, then by the agent;
4. The issuer shall draw up the statement of accounts according to Annex E for each undertaking for collective investments on a yearly basis; the method applied to evaluate the properties shall be the same within each undertaking for collective investments in real estate; the statement of accounts shall be examined by an auditor for correctness and integrity applying § 268 to § 276 Austrian Business Code accordingly; if the examination does not give rise to objections, the auditor shall confirm this by the following annotation: "After having conducted our due audit of the statement of accounts, we hereby certify that they are in compliance with statutory requirements. The evaluation of the real estate properties corresponds to the principles stated in the prospectus and in the statement of accounts. The statement of accounts present a true and fair view of the financial position of the undertakings for collective investments in conformity with generally accepted accounting principles."
5. The issuer shall publish the audited statement of accounts with the audit opinion within six months after the close of the business year, if there is no business year, by 30 of June of every year according to the provisions for the publication of the prospectus pursuant to § 10;
6. The auditor of the financial statements is liable towards investors in the meaning of § 275 Austrian Business Code.

Penal Provisions

§ 15

- (1) Any person who, in connection with a public offering of securities or investments subject to the obligation to publish a prospectus pursuant to this federal act,
1. offers securities or investments for which no approved prospectus, modifications or supplements to the information audited pursuant to § 6 have been published in a timely manner;
 2. gives incorrect commendatory information regarding material circumstances in the meaning of § 7 or conceals adverse facts in a published prospectus, in the changed or supplementary information pursuant to § 6 with a view to influencing the decision on the acquisition, or
 3. in violation of the provisions of § 14 does not publish a statement of accounts, or
 4. gives incorrect commendatory information regarding material circumstances in the meaning of § 7 or conceals adverse facts in financial statements published pursuant to § 14, shall be punishable by law to a prison sentence of not more than two years or to a fine of not more than 360 times the daily fine rate as set by the court unless the violation is more severely punishable by other laws.
- (2) Any person who pursuant to para 1 nos 1 and 2 voluntarily prevents the acquisition of securities or investments before the payment required for acquisition is made, shall not be punished. The offender shall also not be punished if the payment is not made without any effort on his or her part, but the offender though not knowing of this, has voluntarily and seriously made efforts to prevent the acquisition.
- (3) Criminal liability pursuant to para 1 shall be suspended if the prerequisite of active repentance by which the offender hinders the consummation of the offence according to § 167 Criminal Code is given, if the reparation covers the total payment required for the acquisition including related additional charges.

§ 16

Any person who in connection with a public offering of securities or investments subject to the obligation to publish a prospectus pursuant to this federal act or in connection with admission to a regulated market pursuant to § 46 Stock Exchange Act 2018 who acts in a manner described below in the enumeration below shall be deemed to have committed an administrative offence and will be sanctioned by the FMA with a fine of up to EUR 100,000

1. Anyone who offers securities or investments, or professionally mediates such deals, if the prospectus or the modified or supplemented information pursuant to § 6 contradicts the provisions of this federal act, or when acting as issuer, draws up or publishes financial statements that contradict this federal act;
2. Anyone acting as a prospectus auditor or issuer that gives incorrect information in the prospectus or in the modified or supplementary information pursuant to § 6; anyone acting as an issuer or auditor of financial statements that gives incorrect information in an annual report; anyone acting as an expert pursuant to § 8 para 2 or 5 or § 14 no 2 who signs a prospectus without having the mandatory insurance coverage;
3. Anyone who engages in solicitation in violation of the provisions of § 4;
4. Anyone who as an offeror of debt securities for which a rating is to be published pursuant to § 9, fails to publish a rating or does not send it to the Notification Office on time;
5. Anyone who as an offeror does not notify the Notification Office pursuant to § 12, or as a person subject to reporting requirements does not notify the Notification Office pursuant to § 13, even in such cases in which no public offering has been made or no obligation to prepare a prospectus is given;
6. Anyone who as an offeror fails to send the prospectus or the modified or supplemented information pursuant to § 6 to the Notification Office in a timely manner pursuant to this federal act;
7. Anyone who offers debt securities without having obtained the required license from the Ministry of Finance pursuant to § 9 para 1 no 1;
8. Anyone who as a prospectus auditor signs a prospectus or the modified or supplemented information pursuant to § 6 in spite of the fact that reasons for exclusion of said person are given (except if signed simultaneously with an impartial auditor), or as auditor of statements of account audits these or initiates such an audit or review by an auditor or prospectus auditor against whom such reasons for exclusion are given, or when offering securities or investments for sale fails to inform the Notification Office in time of the corresponding insurance or payment of the insurance premium;
9. Anyone who acts contrary to the instructions of the FMA pursuant to § 8a para 2 nos 4 to 8 or § 8a para 8 nos 1 to 3; or fails to immediately send the audit certificate of the prospectus auditor pursuant to § 6 para 4 to the Notification Office; or fails to notify the FMA pursuant to § 10 para 3; or fails to publish the announcement pursuant to § 10 para 4; or engages in solicitation or publication in violation of Chapter V of Regulation (EC) No. 809/2004.
10. Anyone who offers securities in the case of § 3 para 3 without having the required consent of the issuer or of the person responsible for the preparation of the prospectus.

§ 16a.

(1) The FMA has the right to take official action on the grounds of violations of the provisions of this federal act or of the Stock Exchange Act and to give information or disclose such violations to the public only in accordance with the provisions of nos 1 through 3.

1. In the event of any official action in the course of ongoing criminal proceedings, the FMA shall refrain from naming the parties involved unless these are already known to the public, or if there is a major interest of the public in knowing these names.
2. In the event of sanctions, the FMA may respond to inquiries and disclose the names of persons or companies against whom sanctions have been imposed, or the names of the companies for which there are persons acting on their behalf against whom sanctions have been imposed as

well as the sanctions imposed. Sanctions in the meaning of these provisions shall be understood to be all legal acts of the FMA taken after proceedings have been finalized by the issuance of an official notice.

3. The FMA shall refrain from giving such information on official acts or from making a related disclosure in the following cases.
 - a) If the response to an inquiry or the disclosure would put the stability of financial markets at a considerable risk, or
 - b) If the response to an inquiry or the disclosure would be disproportionately damaging to one of the persons affected by the information released or disclosed, or
 - c) If the information given would stop, hamper, delay or endanger proceedings or measures that would benefit the general good.

(2) The party affected by the publication or disclosure of information may request the FMA to review the lawfulness of the publication or disclosure of information pursuant to para 1 within the scope of proceedings finalized by an official decision. 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 or disclosure of information, the FMA shall correct the publication or disclosure of information, upon request of the concerned party, revoke it, or remove it from the Internet. Should an objection against an official decision pursuant to para 1 be granted with a postponing effect on the decision's effectiveness, the FMA shall disclose this in the same manner. The publication or disclosure of information shall be corrected or upon request of the concerned party revoked, or removed from the Internet when the official notice is repealed.

§ 16b

(1) All persons working or having worked for the FMA, including the Notification Office shall be bound by the obligation to keep official secrets. Information considered bound by official secrecy is not permitted to be passed on to other persons or authorities unless such action is imposed by law.

(2) Para 1 does not prevent the FMA or the competent bodies of other EEA member states from exchanging confidential information or forwarding confidential information to ESMA or the European Systemic Risk Board (ESRB) albeit bearing in mind the applicable restrictions of Regulation (EU) No. 1095/2010 or Regulation (EU) No. 1092/2010 on financial supervision of the European Union at the macro level and for the establishment of a European Systemic Risk Board with respect to company-specific information and effects on third countries. Information exchanged in this manner by the FMA, the competent bodies of other EEA member states and ESMA or ESRB shall be considered subject to official secrecy and all persons that work or have in the past worked at the competent authorities that receive such information must comply with this obligation to maintain secrecy.

(3) Valid provisions of other federal acts regarding the obligation to maintain professional secrecy shall not be affected by the provisions of this federal act.

Cooperation with the Competent Authorities of other EEA Member States

§ 16c

(1) The FMA shall cooperate with the competent approval authorities of other EEA member states whenever necessary for the purpose of carrying out its duty and exercising its powers. The FMA shall render assistance to the competent approval authorities of other EEA member states and shall make use of such official assistance from said authorities. In particular, they shall exchange information and cooperate when an issuer has more than one home member state competent authority, because of its various classes of securities, or where the approval of a prospectus has been transferred to the competent authority of another EEA member state pursuant to § 8a para 6. They shall also closely cooperate when requiring the suspension or prohibition of trading for securities traded in various EEA member states in order to ensure a level playing field between trading venues and to guarantee the protection of investors. Where appropriate, the FMA as the competent authority of the host member state may request the assistance of the competent authority of the home member state from the stage at which the case is scrutinized, in particular, as regards a new or rare class of securities. The FMA as

competent authority of the home member state may ask for information from the competent authority of the host member state on any items specific to the relevant market. Without prejudice to § 8a, the FMA may consult with operators of regulated markets as necessary and, in particular, when deciding to suspend or to request a regulated market to suspend or prohibit trading.

(2) The FMA may forward cases to ESMA in which a request for collaboration, in particular, for the exchange of information has been rejected or there has not been any response within a reasonable period of time.

Transitional and Final Provisions

§ 17

(1) For offers subject to the obligation to publish a prospectus made in accordance with this federal act after 30 September 1991, which are still in effect at the time this federal act enters into force, a prospectus shall be published as long as the offer stands, however, at the latest six months after this federal act has entered into force.

(2) Paragraph 1 does not apply to publicly offered securities that are already listed on the Official Market of Vienna Stock Exchange at the time this federal act enters into force.

(3) In the case of investments in real estate pursuant to § 14 which were offered to the public before this federal act entered into force, statements of account shall be published for the first time within six months after the closing of the first business year after this federal act has entered into force, if there is no business year, by 30 June 1993.

§ 17a

Any references in this federal act that refer to persons only in the masculine form shall refer equally to men and women. When applying to certain persons, the applicable gender-specific form is to be used.

§ 17b

(1) Issuers incorporated in a third country whose securities have already been admitted to listing on a regulated market in Austria, may select the FMA as their competent authority if this would have been permissible in the case of admission pursuant to § 1 para 1 no 12c, and must notify the FMA of this decision by 31 December 2005.

(2) Debt securities pursuant to § 3 para 1 no 3 Capital Market Act as amended by federal act FLG I No. 80/2003 may be offered to the public in Austria until 31 December 2008 without being subject to the requirement to draw up a prospectus pursuant to § 2.

(3) In the case of offers subject to the obligation to publish a prospectus pursuant to § 2 Capital Market Act as amended by federal act FLG I No. 80/2003 which started before 10 August 2005 and closed before 10 November 2005, the publication of a prospectus drafted and audited in accordance with the provisions of the Capital Market Act as amended by FLG I No. 80/2003 shall suffice irrespective of § 2 Capital Market Act as amended by this federal act. § 8b para 3 Austrian Capital Market Act shall not apply to prospectuses prepared in this manner.

(4) § 102 para 5 of the Banking Act, FLG 532/1993 no longer applies.

(5) § 73d para 5 of the Insurance Supervision Act as amended by FLG No. 769/1992 no longer applies.

§ 17c

For the enforcement of an Official Notice according to this federal act, the lower amount stated in § 5 para 3 Insurance Supervision Act shall be replaced by the amount of EUR 35,000.

§ 17d

In the case of administrative offences pursuant to § 16, instead of the statute of limitation set out in § 31 para 1 Administrative Offences Act, the statute of limitation shall be 18 months.

§ 17e

Decrees issued by virtue of this federal act may be enacted as of the day following its promulgation.

§ 18

- (1) The Securities Issuing Act, FLG No. 65/1979 expires as soon as this federal act enters into force.
- (2) Any references made in other federal acts to the Securities Issuing Act shall be replaced by the corresponding provisions of this federal act.
- (3) Any references made in this federal act to other federal acts shall apply only to the acts as amended.
- (4) Any reference in this federal act to Regulation (EC) No. 809/2004 means that, unless otherwise stipulated, Regulation (EC) No. 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (Official Journal No. L 149 of 30 April 2004, p. 1) as amended by the corrections in Official Journal No. L 215 of 16 June 2004, p. 3 and Official Journal No. L 186 of 18 July 2005, p. 3 shall apply.
- (5) Insofar as a reference is made in this federal act to Directive 2003/71/EC, and unless otherwise stipulated, Directive 2003/71/EC as amended by Directive 2010/73/EU on the amendment to Directive 2003/71/EC regarding the listing prospectus to be published in the case of public offerings of securities or in the case of admission to trading and on the amendment to Directive 2001/34/EC (Official Journal No. L 345 of 31 December 2003 p. 64) as amended by Directive 2010/73/EU, Official Journal No. L 327 of 11 December 2010, p. 1 shall apply.
- (6) Insofar as a reference is made in this federal act to Directive 2014/51/EU, and unless otherwise stipulated, Directive 2014/51/EU amending Directive 2003/71/EC and Directive 2009/138/EC and Regulation (EC) No. 1060/2009, (EU) No. 1094/2010 and (EU) No. 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), Official Journal No. L 153 of 22 May 2014 p. 1 shall apply.

Entry into Force

§ 19

- (1) This federal act enters into force on 1 January 1992.
- (2) Decrees issued by virtue of this federal act may be enacted as of the day following their promulgation.
- (3) §§ 3 para 1, 7 and 12, paras 4 and 5 as amended by federal act FLG No. 532/1993 shall enter into force on 1 January 1994.
- (4) § 8 paras 2 to 5, § 11 para 1, § 12 para 2, § 14 no 2 and § 16 nos 2 and 8 as well as the Annexes A, B and C as amended by federal act FLG No. 210/1994 shall enter into force on 1 March 1994.
- (5) § 3 para 1 no 15 as amended by federal law FLG I No. 60/1998 shall enter into force at the time of Austria's accession to the Third Stage of the Economic and Monetary Union (EMU), an exemption in the meaning of Article 109k of the Treaty on the Establishment of the European Community (EC Treaty) shall not apply.
- (6) § 13 paras 1, 4 and 5 as amended by federal act FLG I No. 63/1999 shall enter into force on 1 May 1999.
- (7) § 3 para 1 no 13, § 7 para 1, § 10 para 1 nos. 3 and 4, and para 2 as amended by federal act FLG I No. 2/2001 shall enter into force on 1 January 2001.
- (8) § 3 para 1 no 9 and 10, § 8 para 2 no 4 letter a and b, § 8 para 3, § 14 no 2 and § 16 as amended by federal act FLG I No. 2/2001 shall enter into force on 1 January 2002.
- (9) § 6 para 4 and § 7 para 3 and 4 as amended by federal act FLG I Nr. 97/2001 shall enter into force on 1 August 2001.
- (10) § 3 para 1 no 4 as amended by federal act FLG I No. 80/2003 shall enter into force on 1 September 2003.

(11) § 1 paras 1 to 4, § 2, § 3 paras 1 to 4, § 4, § 6, § 6a, § 7, § 7a, § 7b, § 7c, § 8 paras 2, 2a, 2b, 3, 4, 5 and 8, § 8a, § 8b, § 8c, § 10, § 11 para 1, § 11 para 7, § 12 paras 1 and 2, § 13 paras 1, 2, 4 and 5, § 14, § 15 para 1, § 16, § 16a, § 16b, § 16c, § 17a, § 17b, § 17c, § 17d and § 17e as amended by federal act FLG I No. 78/2005 shall enter into force on 10 August 2005. § 3 para 5, § 12 paras 4 and 5, and Annexes A and B shall expire as of the close of the day 9 August 2005.

(12) § 1 para 1 no 4 and 9 as amended by federal act FLG I No. 60/2007 shall enter into force on 1 November 2007.

(13) § 10 para 3 and para 4 as amended by federal act FLG I No. 69/2008 shall enter into force on the day following the promulgation.

(14) § 8a paras 6, 7 and 9, § 8b para 1 and 3, § 8c, § 10 para 9, § 16b para 2 and § 16c para 1 and 2 as amended by federal act FLG I No. 145/2011 shall enter into force on 31 December 2011.

(15) § 1 para 1 no 5a, 17, 18 and 19, § 3 para 1 nos 3, 6, 8, 9, 10, 12 and 14, § 3 para 3, § 6 para 1 and 2, § 6a para 1, 4 and 5, § 7 para 2, 3, 4, 6, 7 and 7a, § 7a para 1 and 4, § 7b para 2, § 8 para 2, § 8a para 8 no 4, § 8b para 3, § 10 para 3 no 3 and § 11 para 1 as amended by federal act, FLG I No. 83/2012 enter into force on 1 July 2012. § 1 paras 2 and 3 expire as of close of the day on 30 June 2012.

(16) § 17d as amended by federal act FLG No. 70/2013 enters into force on 1 January 2014.

(17) § 3 para 1, § 8a para 2 no 9 and § 16a para 2, as amended by federal act FLG I No. 135/2013 enter into force on 22 July 2013.

(18) § 1 para 1 no 8, § 8 para 2, § 8 para 4 and 5 and § 14 no 4 and 6, as amended by federal act FLG I No. 184/2013 enter into force on 1 January 2014.

(19) § 2 para 1, § 3 para 1 no 10a, § 7 para 8a and **Annex F** as amended by federal act, FLG I No. 114/2015 enter into force on the first day of the month following the promulgation.

(20) § 1 para 1 no 12 lit. c, § 3 para 1 no 4, the closing part of § 7 para 4, § 13 para 1, § 10 para 3 no 3, the introductory section in § 16 and also § 18 paras 5 and 6, as amended by federal act, FLG I No. 98/2015 enter into force on 26 November 2015.

(21) § 1 para 1 no 5a; § 1 para 1 no 9; § 1 para 1 no 12 lit. c sublit. bb; § 3 para 2; § 8a para 2 nos 4, 7 and 8 and § 16 as amended by federal act FLG I No. 107/2017 enter into force on 3 January 2018.

(22) § 2 para 2, § 6 para 1a, § 8 paras 1, 2 and 8, § 8a para 7, § 12 paras 1 and 2 as amended by federal act FLG I No. 149/2017 enter into force on 3 January 2018.

(23) § 1 para 1 no 9, § 3 para 1 no 10, § 3 para 5 and § 7 para 8a as amended by federal act FLG I No. 48/2018 shall enter into force on 21 July 2018. § 2 para 1 second sentence, § 3 para 1 no 10a and no 15 expire with the close of the day 20 July 2018.

Enforcement Clause

§ 20

The following entities are authorized to enforce this federal act:

1. With regard to §§ 5, 11 and 15, the Federal Ministry of Justice;
2. With regard to all other provisions, the Federal Ministry of Finance.

Schedule C
LAYOUT FOR THE PROSPECTUS FOR THOSE INVESTMENTS AND SECURITIES
TO WHICH SCHEDULES A AND B DO NOT APPLY

(If the Schedule is to be applied to securities, the term “investment”
is to be replaced by “security”)

Chapter 1

Information on the liable parties pursuant to § 8 and § 11

(Name, Position)

Chapter 2

Information on the Investment

1. Investment terms, in particular, any rights attached to the investment,
2. The registrar, depository and paying agent,
3. Overview of any asset rights issued to date,
4. Legal status of the investment (shares, creditor's rights or mixed form), total amount, denomination as well as purpose of the offer,
5. Type of investment fund (open-ended or closed type),
6. Type and number of other undertakings for collective investments of the issuer or any other undertakings for collective investments that may influence the investment,
7. Stock exchanges on which the investments subject of the public offering and any other securities of the issuer are already listed or traded,
8. Any third parties guaranteeing the investment,
9. Persons who have firmly underwritten the offering or act as guarantor for it,
10. Information pursuant to Schedule A, Chapters 3 to 5 and/or Schedule B, 3 and 4 on those persons to whom the capital raised through the issue is available for business purposes if these persons are not identical to the issuer,
11. Any taxes levied on income earned on the investment (for example capital yields tax, foreign withholding taxes),
12. Subscription period,
13. Any restrictions to the tradability of the investment offered and name of the market on which it can be traded,
14. Distribution, administration and management costs listed by amount and method of calculation,
15. Information on valuation principles,
16. Information on any liens or liabilities,
17. Details on the preparation of the financial statements and of the annual reports, if available,
18. Provisions on the distribution and use of the net profit or surplus for the year,
19. Last financial statements including audit opinion,
20. Description of the purchase price of the investment including all extra charges,
21. Type and scope of surety for an investment recorded in a public register,
22. Information on future prospects of the investment,
23. Conditions and calculation of the offer price for investments issued after placement of the initial issue,
24. Information on any preemptive rights granted to existing investors and their prices in the event of an increase in investment volume, information on how the assets and earnings growth of existing investors is protected against new investors,
25. Description of the possibilities and costs of selling the investment at a later time,
26. Services of the management company and the costs charged,
27. Periods of notice granted by the management company,
28. Provisions on the settlement and position of investors in the event of insolvency,
29. Security identification code (if available).

Chapter 3

Information on the Issuer

1. Name and registered office of the issuer, object of the company,
2. Description of the legal and economic status, in particular, information on the share capital or other capital of the company equivalent to share capital, its denomination including the designation of any different classes of shares,
3. Members of the bodies of the management, administration and supervision (name, position),
4. Names of shareholders who directly or indirectly play – or could play – a controlling role in the management of the issuer,
5. Most recent financial statements including any management report and audit opinion(s).

Chapter 4

Information on the Depository Bank (if applicable)

1. Name and registered office of the company,
2. Financial statements including the audit opinion.

Chapter 5

1. Type and scope of information the investors receive on a regular basis on the economic development of the investment,
2. Any other information needed by the investor to reach an informed judgment in the meaning of § 7 para 1.

Chapter 6

Verification Note of the Prospectus Auditor

SCHEDULE D
LAYOUT FOR THE ADDITIONAL PROSPECTUS FOR INVESTMENTS IN REAL ESTATE (§ 14)

Chapter 1

Information on the liable parties pursuant to § 8 and § 11

(Name, Position)

Chapter 2

Information on Investments in Real Estate Offered

1. Legal form of the investment, total volume and any denominations;
2. Type of undertakings for collective investments (open-ended or closed);
3. Type, number and location (in or outside the country) of the available real estate and type and number of real estate properties projected;
4. Principles according to which the acquisition, sale and administration of the real estate is conducted;
5. Distribution and management costs of collective investment undertakings broken down by amount and type of calculation giving the details of the services performed by the management;
6. Legal contracts of collective investment undertakings with third parties involved in the distribution and management of the collective investment undertakings and the costs invoiced by third parties and their services performed or to be performed;
7. Evaluation methods that must be uniform within each undertaking for collective investments;
8. Per property: acquisition costs, space available for rent, year of construction, sum of costs of renovation, maintenance, upkeep and improvement work done, sum of costs of planned renovation, maintenance, upkeep and improvement work, method of calculation of overhead costs;
9. Liens entered in the property register or other liabilities insofar as material for the valuation of property; for each property;
10. Details on the method of calculation of the annual net profit or surplus for the year and the preparation of the annual report;
11. Provisions on the distribution and use of the net profit or surplus for the year;
12. Indication of the purchase price of the investments offered for sale including all additional charges;
13. Type and volume of the collateral entered in the land register as surety for the investment;
14. Future position and rights of investors in the event of structural changes;
15. Information on any preemptive rights of existing investors and their price and/or price determination in the event of an increase in the investment volume; information on how the assets and earnings growth of existing investors is protected against new investors or can be adequately compensated;
16. Projected profitability and method of calculation of profitability,
17. Possibility of placing the investment and determination of the offer price,
18. Provisions on the settlement and the position of investors in the event of insolvency.

Chapter 3

Information on Third Parties Involved in the Distribution and Management of the Collective Investment Undertakings

1. Name and registered office of the company, object of the company;
2. Persons responsible for the management and supervision of the management;
3. Most recent financial statements including the audit opinion and, if available, the annual report.

Chapter 4

Information on Insurance Coverage per Property

Fire insurance, amount of the insurance sum and degree of coverage.

Chapter 5

Type and Scope of Regular Information for Investors on the Economic Development of the Investment

Chapter 6

If available, financial statements for the previous year

SCHEDULE E
LAYOUT FOR THE STATEMENT OF ACCOUNTS OF UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN REAL ESTATE

I. Information on the Rights of Investors

A. Financial statements

a) Inflow of funds

1. from the issue of investments;
2. from real estate;
3. from the sale of real estate;
4. from investments in undertakings for collective investment in real estate;
5. from the sale of investments in undertakings for collective investment in real estate;
6. from investments in companies;
7. from the sale of investments in companies;
8. from other asset rights, broken down by type of asset right;
9. from the sale of other asset rights, broken down by type of asset right;
10. from other cash flows of incoming funds;
11. other incoming funds.

b) Outflow of funds

1. into real estate;
2. into investments in undertakings for collective investment in real estate;
3. into investments in companies;
4. into other asset rights, broken down by type of asset right;
5. building costs;
6. payments and costs of administration broken down by type of payment and cost;
7. into the formation of reserves, broken down by individual type of asset right;
8. from other cash outflows;
9. other outflows.

c) Net profit/loss for the year

B. Alternative to A - Calculation of profits according to applicable legal provisions.

II. Information on Assets

A. Investment per property

- a) Location
- b) Size
- c) Year of erection
- d) Year of acquisition
- e) Costs of acquisition, broken down by purchase price and additional costs or production costs
- f) Space available for rent
- g) Method of calculation of overhead costs
- h) Sum of costs of renovation, maintenance, upkeep, improvement and expansion work carried out
- i) Sum of costs for planned renovation, maintenance, upkeep, improvement and expansion work
- j) Costs of administration if these are not included in the overhead costs
- k) Requirements of building authorities if these are relevant for the valuation of the property
- l) Liens entered in the property register and other liabilities, if they are material to the valuation of the property
- m) Fire insurance, the insurance amount and coverage

- B. Investments in undertakings for collective investment in real estate, per undertakings for collective investment
1. Issuer
 - a) Name
 - b) Register
 - c) Legal status
 - d) Founding year
 - e) Registered seat/main office
 - f) Object
 - g) Members of the bodies of the management, administration and supervision (name, position)
 2. Book value of the investment
 3. Distributions from the investment
- C. Investments in companies, by shareholding (if not listed under B)
1. Company
 - a) Name
 - b) Register
 - c) Legal status
 - d) Founding year
 - e) Registered seat/main office
 - f) Object
 - g) Members of the bodies of the management, administration and supervision (name, position)
 2. Book value of the investment
 3. Distribution from the investment
 4. Performance ratios (pursuant to § 2 of the Decree issued by the Ministry of Finance of 29 September 1982, FLG No. 505/1982)
 - a) Equity ratio
 - b) Cash flow to operating output
 - c) Profitability of total capital
 - d) Effective debt-to-cash flow ratio
 - e) Number of employees
 5. Direct and indirect investments of the company named under C if the share calculated is at least 25%
 - a) Name
 - b) Legal status
 - c) Costs of acquisition
 - d) Term
- D. Other asset rights, per asset right
- a) Type of asset right
 - b) Capital invested
 - c) Profitability of capital invested
 - d) Possibilities of cancellation and periods of notice

E. Investment reserves broken down by each type

F. Management, personnel and material costs if not listed under II. A)

III. Distribution per Investment

1. Total volume of investment
2. Denomination
3. Net profit for the year
4. Distribution per investment

IV. Description of Development of Property per Investment

1. Total assets including description of valuation methods
2. Assets per investment
3. Profitability of investment and method of calculation

V. Explanations

VI. Disclosure Requirements

VII. Audit Opinion

Schedule F

LAYOUT FOR THE SIMPLIFIED PROSPECTUS FOR INVESTMENTS AND SECURITIES
(If the Schedule is to be applied to securities, the term “investment” used therein is to be replaced by the term “security” as applicable)

Chapter 1

Information on the liable parties pursuant to § 8 and § 11

(Name, Position)

Chapter 2

Information on the Investment

1. Investment terms, in particular, any rights attached to the investment;
2. The registrar, depository and paying agent;
3. Overview of any asset rights issued to date,
4. Legal status of the investment (shares, creditor's rights or mixed form), total amount, denomination as well as purpose of the offer,
5. Type of investment fund (open-ended or closed type),
6. Any third parties guaranteeing the investment,
7. Persons who have firmly underwritten the offering or act as guarantor for it,
8. Any taxes levied on income earned on the investment (for example capital yields tax, foreign withholding taxes),
9. Subscription period,
10. Any restrictions to the tradability of the investment offered and name of the market on which it can be traded,
11. Information on any liens or liabilities,
12. Provisions on the distribution and use of the net profit / surplus for the year,
13. Description of the purchase price of the investment including all extra charges,
14. Type and scope of surety for an investment recorded in a public register,
15. Description of the possibilities and costs of selling the investment at a later time,
16. Provisions on the settlement and position of investors in the event of insolvency,
17. Security identification code (if available)
18. Distribution, administration and management costs listed by amount and method of invoicing.

Chapter 3

Information on the Issuer

1. Name and registered office of the issuer, object of the company,
2. Description of the legal and economic status, in particular, information on the share capital or other capital of the company equivalent to share capital, its denomination including the designation of any different classes of shares,
3. Members of the bodies of the management, administration and supervision (name, position),
4. Names of shareholders who directly or indirectly play – or could play – a controlling role in the management of the issuer,
5. Most recent financial statements including any management reports and audit opinion(s),

Chapter 4

Information on the Depository Bank (if applicable)

1. Name and registered office of the company,
2. Financial statements including the audit opinion.

Chapter 5

1. Type and scope of information the investors receive on a regular basis on the economic development of the investment,
2. Any other information needed by the investor to reach an informed judgment in the meaning of § 7 para 1.

Chapter 6

Verification Note of the Prospectus Auditor

ARTICLE 1

(Note: from FLG I No. 78/2005; on §§ 1 to 4, 6 to 8c, 10 to 16c and 17a to 17e, FLG No. 625/1991)

This federal act enacts in national law Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 regarding the listing prospectus to be published in the case of public offerings of securities or in the case of admission to trading; the amendment to Directive 2001/34/EC (Official Journal No. L 345 of 31 Dec. 2003, p. 64).

ARTICLE 1

(Note: from FLG I No. 60/2007; on § 1, FLG No. 625/1991)

This federal act serves to enact in national law Directive 2004/39/EC of the European Parliament and the Council on Markets in Financial Instruments, the amendment to Council Directives 85/611 EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council; to repeal Directive 93/22/EEC of the Council (Official Journal No. 145 of 30 Apr. 2004, p.1) as amended by Directive 2006/31/EC amending Directive 2004/39/EC on Markets in Financial Instruments with respect to certain periods (Official Journal No. L 114 of 27 Apr. 2006, p. 60) and Directive 2006/73/EC of the Commission implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and specific terms for the purposes of said Directive (Official Journal No. L 241 of 2 Sept. 2006, p. 26).

ARTICLE 1

(Note: from FLG I No. 69/2008; on § 10, FLG No. 625/1991)

This federal act serves to enact in national law Directive 2007/16/EC of the European Commission implementing Directive 85/611/EC of the Council (Official Journal No. L 375 of 31 Dec. 1985, p. 3) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2005/1/EC of the European Parliament and of the Council (Official Journal No. L 79 of 24 March 2005, p. 9) with respect to the explanation of certain definitions (Official Journal No. L 79 of 20 March 2007, p. 11).

ARTICLE 1

(Note: from FLG I No. 145/2011; on §§ 8a to 8c, 10, 16b, and 16c, FLG No. 625/1991)

This federal act passes the following legislation into national law:

1. Directive 2010/76/EU amending Directive 2006/48/EC, 2006/49/EC as regards capital requirements for the trading book and for re-securitizations, and the supervisory review of remuneration policies (Official Journal No. L 329 of 14 Dec. 2010, p. 3) and
2. Directive 2010/78/EU amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Official Journal No. L 331 of 15 Dec. 2010, p. 120).

ARTICLE 1

Notes on the Implementation

(Note: from FLG I No. 107/2017; on §§ 1, 3, 8a and 16, FLG No. 625/1991)

This federal act serves to enact into national law the following legal acts of the European Union:

1. Directive 2014/65/EU on Markets in Financial Instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, Official Journal No. L 173 of 12 June 2014 p. 349, last amended by Directive (EU) 2016/1034, OJ No. L 175 of 23 June 2016 p. 8, as amended by correction OJ No. L 64 of 10 March 2017 p. 116, and

2. Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, OJ No. L 87 p. 500.

Furthermore, this federal act serves to ensure the effective enforcement of the following legal acts of the European Union:

1. Regulation (EU) No. 600/2014 on Markets in Financial Instruments amending Regulation (EU) No. 648/2012, OJ No. L 173 of 12 June 2014 p. 84, last amended by Regulation (EU) 2016/1033, OJ No. L 175 of 23 June 2016 p. 1,
2. Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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, and
3. 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. L 87 p. 90.

ARTICLE 1

Notes on the Implementation

(Note: from FLG I No. 35/2013; on §§ 3, 8a and 16a, FLG No. 625/1991)

This federal act serves to enact in national law:

1. Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 OJ No. L 174 of 1 July 2011 p. 1, as amended by correction OJ No. L 155 of 27 April 2012 p. 35, and
2. to establish the conditions for the following legal acts to take effect
 - a) Regulation (EU) No. 345/2013 on European venture capital funds, OJ No. L 115 of 25 April 2013, p 1, and
 - b) Regulation (EU) No. 346/2013 on European social entrepreneurship funds, OJ No. L 115 of 25 April 2013, p 18.

ARTICLE 1

(Note: from FLG I No. 184/2013; on §§ 1, 8 and 14, FLG No. 625/1991)

This federal act enacts in national law 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 No. L 176 of 27 June 2013 p. 338, and to adapt supervisory law to Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, OJ No. L 176 of 27 June 2013 p. 1 as well as implementation of Directive 2011/89/EU amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate, OJ No. L 326 of 8 Dec. 2011 p. 113.

ARTICLE 1

Notes on the Implementation

(Note: from FLG I No. 69/2015; on §§ 10 and 18, FLG No. 625/1991)

This federal act serves to enact in national law 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, Official Journal No. L 257 of 28 August 2014 p. 1.