

part of eex group



Third Country Firms – German Banking Act

Raik Dahl / Till Claussen
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Please note: This information sheet only applies for firms with a registered office or residence outside the European Economic Area (Third Country Firms) and therefore is not relevant for UK firms.

With the introduction of the MiFID II implementation act on January 3rd 2018, the scope of the German Banking Act (Kreditwesengesetz – “KWG”) now also includes proprietary business, i.e. trading in financial instruments as a **member or DEA user**¹ of a German exchange, a multilateral trading facility or other trading venue in one's own name and on one's own account without providing any service to a third party. This also applies for third country firms acting from a registered office or residence outside the European Economic Area (EEA) including countries such as Switzerland, United States of America, Canada and Cayman Islands.

As a result, to continue trading at EEX in financial instruments triggers the requirement of a suitable authorization or exemption by the German Federal Financial Supervisory Authority (“BaFin”). An exemption may be achieved in one of two different ways:

- If your company is able to benefit from the **exemption for ancillary activities** (§ 32 (1a) sentence 3 no. 3, § 2 (1) no. 9 and § 2 (6) sentence 2 no. 11 KWG), you may send a notification to BaFin containing your name, address and e-mail contact. The notification must also specify the undertaking's main business and the respective provision of the KWG. The notification ([link](#)) needs to be posted in the German language to:

Bundesanstalt für Finanzdienstleistungsaufsicht

Abteilung Erlaubnispflicht und Verfolgung unerlaubter Geschäfte

Graurheindorfer Straße 108

53117 Bonn

- If your company is not able to benefit from the exemption for ancillary activities you may take advantage of a **transitional provision** (§ 64x (8) sentence 1 KWG) which temporarily exempts your company from the authorization requirement **if you submit a complete application for exemption pursuant to § 2 (5) KWG to BaFin by 2nd July 2018**. The application ([link](#)) must be addressed in the German language to:

¹ Firms who have access to EEX via a DEA Provider that is an EEX trading participant. If you are a DEA Provider, we kindly remind you to inform your clients using your DEA system accordingly.

Bundesanstalt für Finanzdienstleistungsaufsicht

Referat EVG 5

Graurheindorfer Straße 108

53117 Bonn.

In case you are uncertain if the ancillary activities exemption applies for your company, an exemption application pursuant to § 2 (5) of the KWG should be addressed to BaFin by **2nd July 2018 at the latest** to benefit from the grandfathering rule (§ 64x (8) sentence 1 KWG).

In order to support our third country participants, EEX prepared templates that may be used for a formally correct notification or exemption application. These templates and further information regarding this matter may be received by sending an E-Mail to **mifid@eex.com** or by contacting:

European Energy Exchange AG

Till Claussen / Raik Dahl

Phone: +49 341 2156 526, Fax: +49 341 2156 109

Email: raik.dahl@eex.com

Augustusplatz 9, 04109 Leipzig, Germany.

In case you are currently not advised in this matter by a legal counsel we can recommend to mandate PricewaterhouseCoopers Legal AG as they are briefed by EEX and may assist you to swiftly complete an outstanding notification or application:

PricewaterhouseCoopers Legal AG Rechtsanwaltsgesellschaft

Peter Mussaeus / Christoph Sänger

Phone: +49 211 9812 807, Fax: +49 211 9814 011

Email: christoph.saenger@de.pwc.com

Moskauer Straße 19, 40227 Düsseldorf, Germany.