



With this document, Eurex wants to provide trading participants with an update regarding transitional periods in Germany for third country firms engaged in dealing on own account.

On its webpage BaFin published an amendment to its administrative practice in accordance with § 2 paragraph 4 German Banking Act (§ 2 paragraph 5 under the amended German Banking Act).

This administrative practice is described in the “Notes regarding the licensing for conducting cross-border banking business and/or providing cross-border financial services” from 01 April 2005. In its amendment to these notes, BaFin clarifies that the certification from the competent authority/authorities of the home country of a third country firm is not required in order to determine completeness of an application for exemption in the meaning of § 64v paragraph 8 sentence 1 of the amended German Banking Act. The respective applications need to be submitted to BaFin until 2 July 2018 in order to be allowed to continue business after 3 January 2018.

The “Notes regarding the licensing for conducting cross-border banking business and/or providing cross-border financial services” from 01 April 2005 can be found [here](#). The amendment is only available in German and can be found [here](#).

If you have any further questions or comments, please do not hesitate to contact your Key Account Manager or customer.readiness@deutsche-boerse.com



Background

MiFID II extends the scope of trading activities requiring authorisation as investment firm. According to article 2.1 (d) of MiFID II, the authorization scope has broadened to firms dealing on own account in financial instruments, if they are, among others, members of or participants in a regulated market or an MTF or have direct electronic access to a trading venue in accordance with Art. 4.1 (41) MiFID II.

In Germany this scope extension is implemented in the amended German Banking Act § 32 Sec. 1a Sentence 2+3.

Third country firms dealing on own account on Eurex and who are NCMs or clients of NCMs having direct electronic access to Eurex, may set up a Branch in the EEA or chose the MiFIR equivalence path in order to be able to continue trading in the EEA after 03 January 2018.

If firms choosing the equivalence regime, member states may implement transitional periods for the time from 03 January 2018 (effective date of MiFID II) and an equivalence decision of the EU Commission.

In Germany such transitional period for third country firms dealing on own account is implemented in the amended German Banking Act § 64v Sec. 8. Prerequisite to participate in the transitional period is the submission of a complete application of exemption to BaFin by 02 July 2018. Information required to determine completeness of an application are listed in BaFin's notes regarding the licensing for conducting cross-border banking business and/or providing cross-border financial services, section 2. c.

More information can be found on the [Eurex webpage](#).