



German HFT Bill – Client Information Session

02 April 2013



Announcement of German HFT Bill in April 2013

April 2013	Announcement of German HFT Bill
22.03.2013	Second Review Bundesrat (Upper House of German Parliament)
28.02.2013	Second and Third Reading Bundestag (Lower House of Parliament)
27.02.2013	Final Consultation in the Bundestag Financial Committee
30.01.2013	Consultation in the Bundestag Financial Committee
16.01.2013	Hearing in Financial Committee of the Bundestag (Lower House of German Parliament)
29.11.2012	First Reading Bundestag (Lower House of German Parliament)
23.11.2012	First Review Bundesrat (Upper House of German Parliament) (incl. statement)
26.09.2012	Decision Bundeskabinett (Federal Cabinet)
17.08.2012	Consultation Deadline for Departments and Organizations
30.07.2012	Publication of Discussion Paper for Participation of Organizations

German HFT Bill foresees measures and procedures to regulate algorithmic trading and HFT by introducing....

Aspects of HFT Bill

Deutscher Bundestag

Drucksache 17/12536

17. Wahlperiode

27. 02. 2013

Beschlussempfehlung und Bericht
des Finanzausschusses (7. Ausschuss)

zu dem Gesetzentwurf der Bundesregierung
– Drucksachen 17/11631, 17/11874 –

Entwurf eines Gesetzes zur Vermeidung von Gefahren und Missbräuchen im Hochfrequenzhandel (Hochfrequenzhandelsgesetz)

A. Problem

In den letzten Jahren hat aufgrund technologischer Entwicklungen und im Zuge des zunehmenden Wettbewerbs zwischen Finanzplätzen durch Schaffung neuer Arten von Handelsplattformen der elektronische Handel von Finanzinstrumenten zunehmend an Bedeutung gewonnen. Bestimmte Handelsteilnehmer setzen beim elektronischen Handel algorithmische Handelsprogramme ein, die Kauf- und Verkaufssignale in sehr kurzen Abständen von teilweise nur einigen Sekundenbruchteilen generieren und das Halten von Finanzinstrumenten nur für sehr kurze Zeiträume vorsehen. Hierbei handelt es sich um den sog. Hochfrequenzhandel.

Der Einsatz dieser algorithmischen Hochfrequenzhandelsstrategien hat die Geschwindigkeit und Komplexität des Handels erhöht und birgt darüber hinaus eine Vielzahl von Risiken, wie die Überlastung der Handelssysteme in Form einer übermäßigen Nutzung durch ein sehr hohes Orderaufkommen. Daneben besteht das Risiko, dass algorithmische Handelsstrategien auf andere Marktereignisse überreagieren, was die Volatilität erhöhen kann. Schließlich können durch den Hochfrequenzhandel bestimmte Formen von missbräuchlichem Verhalten entstehen.

B. Lösung

Mit dem Gesetzentwurf wird angestrebt, den besonderen Risiken des algorithmischen Hochfrequenzhandels entgegenzuwirken, indem mit der Erweiterung der Definition des Eigenhandels um den Hochfrequenzhandel eine Aufsichtslücke geschlossen und die Hochfrequenzhändler unter die Aufsicht der Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) gestellt werden.

Zudem sollen strengere Anforderungen an den algorithmischen Handel gestellt werden. Wertpapierdienstleistungsunternehmen, Kapitalanlagegesellschaften und selbstverwaltende Investmentaktiengesellschaften, die den algorithmischen

1 Additional rights for the Exchange Supervisory Authority/BaFin

2 Price discovery protection (e.g. volatility interruptions)

3 Requirements to set appropriate tick sizes

4 Organizational requirements for investment firms (IFs)

5 Order to Trade Ratios (OTR); Excessive System Usage-Fees (ESU-Fee)

6 Flaggering of algorithmically generated orders

7 Registration obligation as Financial Service Institutions

Additional rights for supervisors, protection of price discovery process and appropriate tick sizes

Issue	Description
1 Additional rights for supervisors	<p>§ Supervisors (Exchange Supervisory Authority and BaFin) are allowed to request information about algorithmic trading, the used systems, and a description of strategies or parameters, wherever grounds for checks with one of the provisions that are covered in the bill.</p> <p>§ Supervisors are allowed to prohibit algo trading strategies.</p>
2 Protection of price discovery process	<p>§ Exchange* has to ensure that orderly price discovery is granted even in situations of large price fluctuations (changes of market model, volatility interruptions under consideration of static or dynamic price corridors or limit control systems).</p>
3 Set Tick Sizes	<p>§ Exchange has to ensure an appropriate tick size to prevent adverse effects on market integrity and liquidity.</p> <p>§ When determining tick sizes, Exchange needs to consider that the price discovery mechanism and the goal of reaching a suitable OTR are not affected.</p> <p>§ Further provisions can be delivered by Exchange Rules.*</p>

* Similar for MTF

Organizational requirements for investment firms that use algorithmic trading and introduction of ORTs and fees for excessive system usage

Issue

Description

4 Organizational requirements for IFs

Securities Trading Act §33 (1a)

Applies for investment firms that use algorithmic trading. The firm must facilitate system and risk controls in order to ensure

1. its trading systems are resilient, have sufficient capacity and are subject to appropriate trading limits
2. that orders are not transmitted erroneously or a malfunctioning of the system is avoided, which would cause disruptions on the market or would contribute to these disruptions.
3. its trading systems cannot be used for a purpose that is contrary to the European or national rules preventing market abuse or the regulations of a trading venue to which it is connected.

The firm must further have in place emergency measures in order to deal with unforeseen disruptions in its trading system and ensure that its system are fully tested and orderly surveilled. It must also ensure that every change of a computer algorithm used for trading is documented.

5 Order to Trade Ratios and Excessive Usage Fee

Exchange Act §26a and §19

§ Participants are required to ensure suitable Order-to-Trade Ratio (OTR).

§ OTR tbd. by Exchange Rules*; per instrument; per month, per function of trading participant, per asset class

Exchange Act §17

§ Introduction of Excessive System Usage-Fee.

§ Fees tbd. by Management Board of Exchange

Order flagging required for orders generated by investment firms' computer algorithms

Issue	Description
Algorithmic trading defined	<p>Securities Trading Act §33 (1a)</p> <ul style="list-style-type: none"> § An investment firm § Trading in financial instruments § Order parameters are determined automatically by a computer algorithm § Parameters include decisions <ul style="list-style-type: none"> § to initiate the order § on time, price or quantity of the order § or how the order should be processed after its initiation, whereas it involves limited or no human interaction <p>Exemptions:</p> <ul style="list-style-type: none"> § Systems that merely route orders § Systems that confirm orders
Labeling of algorithmic orders	<ul style="list-style-type: none"> § Exchange Act §16 (2) (c) § Designation of orders that are generated by Algorithmic Trading by trading participants and § Identification of the respectively used trading algorithms

License for firms under German Banking Act needed if they perform “High Frequency Algorithmic Trading” on own account



Original German legal text:

Artikel 2: Erweiterung Kreditwesengesetzes (§1 Absatz 1a Satz 2 Nummer 4) um folgende Finanzdienstleistung:

- d) „Kaufen oder Verkaufen von Finanzinstrumenten für eigene Rechnung als unmittelbarer oder mittelbarer Teilnehmer eines inländischen organisierten Marktes oder multilateralen Handelssystems mittels einer hochfrequenten algorithmischen Handelstechnik, die gekennzeichnet ist durch die Nutzung von Infrastrukturen, die darauf abzielen, Latenzzeiten zu minimieren, durch die Entscheidung des Systems über die Einleitung, das Erzeugen, das Weiterleiten oder die Ausführung eines Auftrags ohne menschliche Intervention für einzelne Geschäfte oder Aufträge und durch ein hohes untertägliches Mitteilungsaufkommen in Form von Aufträgen, Quotes oder Stornierungen, auch ohne Dienstleistung für andere, (Eigenhandel).“



English convenience translation (non binding):

Article 2: Extension of banking act (Section 1 paragraph 1a Sentence 2 number 4) by following financial service:

- d) „The purchase or sale of financial instruments **on own account** as a direct or indirect participant of a domestic organised market or multilateral trading system **by means of a high frequency algorithmic trading technique** characterized by **infrastructure intended to minimize latency**, as well as **system determination of order initiation, generating, routing or execution without human intervention** for individual trades or orders and by **high intraday message rates which constitute orders, quotes or cancellations** also without providing services for others (proprietary trading).“

Passporting of license in order to continue trading on a German trading venue

Issue	Description
EEA-based firms	
With permission for “dealing on own account”	<ul style="list-style-type: none">§ If not already passported to Germany: Need to passport their license to Germany via home supervisor§ If already active in Germany with European passport: No additional license needed (merely notification)
Without permission	<ul style="list-style-type: none">§ Need to get license from home supervisor and then passport the license§ Alternative: Set up branch in Germany and get a license
Non-EEA-based firms	
With permission similar to MiFID’s “dealing on own account”	<ul style="list-style-type: none">§ No information provided in bill
Without permission	<ul style="list-style-type: none">§ No information provided in bill

Transitional Periods are granted for firms that are not yet regulated for HFT

Issue	Description
EEA-based firms	
With permission for “dealing on own account”	§ Application for passporting is filed with home supervisor within six months
Without permission	§ After license has been obtained: application for passporting is filed with home supervisor within six months § Alternative (Set up branch in Germany): complete application is filed with BaFin within nine months
Non-EEA-based firms	
With permission similar to MiFID’s “dealing on own account”	§ Complete application is filed with BaFin within nine months (branch to be set up)
Without permission	§ Complete application is filed with BaFin within nine months (branch to be set up)

Links and Contacts



List of Links

[German HFT Bill \(as of 26th September 2012\)](http://www.bundesfinanzministerium.de/Content/DE/Downloads/Abt_7/2012-09-26-PM56-Hochfrequenzhandel.pdf?__blob=publicationFile&v=3)

http://www.bundesfinanzministerium.de/Content/DE/Downloads/Abt_7/2012-09-26-PM56-Hochfrequenzhandel.pdf?__blob=publicationFile&v=3

[Bundesrat opinion regarding German HFT Bill](http://www.bundesrat.de/clin_320/SharedDocs/Drucksachen/2012/0601-700/607-12_28B_29,templateId=raw,property=publicationFile.pdf/607-12%28B%29.pdf)

http://www.bundesrat.de/clin_320/SharedDocs/Drucksachen/2012/0601-700/607-12_28B_29,templateId=raw,property=publicationFile.pdf/607-12%28B%29.pdf

[Written statements for hearing on 16th January 2013](http://www.bundestag.de/bundestag/ausschuesse17/a07/anhoerungen/2013/123/Stellungnahmen/index.html)

<http://www.bundestag.de/bundestag/ausschuesse17/a07/anhoerungen/2013/123/Stellungnahmen/index.html>

[Protocol of hearing on 16th January 2013](http://www.bundestag.de/bundestag/ausschuesse17/a07/anhoerungen/2013/123/123-16_01_2013-Hochfrequenzhandel_E-Mail_.pdf)

http://www.bundestag.de/bundestag/ausschuesse17/a07/anhoerungen/2013/123/123-16_01_2013-Hochfrequenzhandel_E-Mail_.pdf

[List of attending authorized experts in the hearing](http://www.bundestag.de/bundestag/ausschuesse17/a07/anhoerungen/2013/123/Sv-Liste_Hochfrequenzhandel.pdf)

http://www.bundestag.de/bundestag/ausschuesse17/a07/anhoerungen/2013/123/Sv-Liste_Hochfrequenzhandel.pdf

[German HFT Bill as passed in the Bundestag \(as of 28th February 2013\)](http://dip21.bundestag.de/dip21/btd/17/125/1712536.pdf)

<http://dip21.bundestag.de/dip21/btd/17/125/1712536.pdf>

[Bundesrat decision \(as of 22nd March 2013\)](http://www.bundesrat.de/clin_330/SharedDocs/Drucksachen/2013/0101-200/156-13_28B_29,templateId=raw,property=publicationFile.pdf/156-13(B).pdf)

[http://www.bundesrat.de/clin_330/SharedDocs/Drucksachen/2013/0101-200/156-13_28B_29,templateId=raw,property=publicationFile.pdf/156-13\(B\).pdf](http://www.bundesrat.de/clin_330/SharedDocs/Drucksachen/2013/0101-200/156-13_28B_29,templateId=raw,property=publicationFile.pdf/156-13(B).pdf)

[BaFin FAQs \(will updated continuously\)](http://www.bafin.de/EN/DataDocuments/FAQ/HFT-Gesetz/hft-gesetz_node.html)

http://www.bafin.de/EN/DataDocuments/FAQ/HFT-Gesetz/hft-gesetz_node.html

[Bundesbank explanatory note on authorization to perform financial services in Germany \(German, No. 6, pp 21 - 24\)](http://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/WA/dl_071101_fidierlaubnis_buba.pdf?__blob=publicationFile)

http://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/WA/dl_071101_fidierlaubnis_buba.pdf?__blob=publicationFile

BaFin Mailbox: hft@bafin.de

List of Contacts

Eurex Exchange

Dr. Randolph Roth

Executive Director - Head of Market Structure

Phone: +49-69-211-12793

Email: randolf.roth@eurexchange.com

Vassiliki Veliou

Vice President – Market Structure

Phone: +49-69-211-13903

Email: vassiliki.veliou@eurexchange.com

Xetra

Dr. Miroslav Budimir

Senior Vice President – Head of Business Development

Phone: +49-69-211-13441

Email: miroslav.budimir@deutsche-boerse.com

Sandra Bramhoff

Vice President – Business Development

Phone: +44-207-862-7259

Email: sandra.bramhoff@deutsche-boerse.com

Disclaimer

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. Deutsche Börse AG has made every effort to ensure that all statements and information contained in this publication are accurate as of the date of this publication but accepts no liability in case of errors or omissions. All materials provided by Deutsche Börse AG in this publication are and remain the intellectual property of Deutsche Börse AG and all rights therein are reserved.

All trademarks, logos etc. depicted or otherwise used in this document, including Deutsche Börse Group entities names and logos, are owned by the respective Deutsche Börse Group entity and may not be used without such owners' prior written express consent.